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(Com. Sub. for S. B. 350 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources 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 Health and Human Resources to promulgate a legislative rule relating to assisted living residences; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to Alzheimer’s/dementia special care units and programs; authorizing Department of Health and Human Resources and the Insurance Commissioner to promulgate a legislative rule relating to hospital licensure; authorizing Department of Health and
Human Resources to promulgate a legislative rule relating to public water systems; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to fees for permits; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to cancer registry; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to reportable diseases, events and conditions; and authorizing Department of Health and Human Resources to promulgate a legislative rule relating to regulation of opioid treatment programs.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section five, article five-d, chapter sixteen of this code and of section five, article five-r of said chapter, 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 five, relating to the Department of Health and Human Resources (assisted living residences, 64 CSR 14), is authorized.

(b) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand five, authorized under
the authority of section five, article five-r, 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 five, relating to the Department of Health and Human Resources (Alzheimer’s/dementia special care units and programs, 64 CSR 85), is authorized.

(c) The legislative rule filed in the State Register on the nineteenth day of July, two thousand five, authorized under the authority of section eight, article five-b, 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 eighteenth day of January, two thousand six, relating to the Department of Health and Human Resources (hospital licensure, 64 CSR 12), is authorized.

(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized under the authority of section nine-a, 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-second day of December, two thousand five, relating to the Department of Health and Human Resources (public water systems, 64 CSR 3), is authorized.

(e) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized under the authority of section four, article one, chapter sixteen of this code, and of section four, article thirty-five of said 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-
second day of December, two thousand five, relating to the
Department of Health and Human Resources (lead abatement licensing, 64 CSR 45), is authorized.

(f) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of sections four and eleven, 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-second day of December, two thousand five, relating to the Department of Health and Human Resources (fees for permits, 64 CSR 30), is authorized, with the following amendment:

On page three, subsection 3.12, by striking out the words “two hundred fifty (250)” and inserting in lieu thereof the words “five hundred (500)”;

On line twelve, subsection 3.12, after the word “people.”, by inserting the following: “The term shall not include assembly in any outdoor venue ordinarily used and equipped for such events.”;

And,

On page seven, subsection 4.8, after the word “revision.”, by inserting the following: “The Commissioner may not approve any fees that exceed an increase of twenty-five percent per year of the local board’s current fees, up to the maximum amount permitted. In the event the local board is requesting a fee for a service on which it does not currently impose a fee, the Commissioner may approve a fee that is no greater than twenty-five percent of the maximum amount.”
(g) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section two-a, article five-a, 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-second day of December, two thousand five, relating to the Department of Health and Human Resources (cancer registry, 64 CSR 68), is authorized.

(h) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of December, two thousand five, relating to the Department of Health and Human Resources (reportable diseases, events and conditions, 64 CSR 7), is authorized.

(i) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand five, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of December, two thousand five, relating to the Department of Health and Human Resources (regulation of opioid treatment programs, 64 CSR 90), is authorized.
CHAPTER 141

(Com. Sub. for H. B. 4192 — By Delegates Mahan, Palumbo, Cann, Pino, Armstead and Overington)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

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 Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the 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 State Fire Commission to promulgate a legislative rule relating to the State Fire Code; authorizing the State Fire Commission to promulgate a legislative rule relating to the State Building Code; authorizing the State Fire Commission to promulgate a legislative rule relating to the certification of home inspectors; authorizing the State Fire Commission to promulgate a legislative rule relating to standards for the certification and continuing education of municipal, county and other public sector building code officials,
building code inspectors and plans examiners; and authorizing the State Police to promulgate a legislative rule relating to the West Virginia State Police Grievance Procedure.

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. State Fire Commission.

§64-6-2. State Police.

§64-6-1. State Fire Commission.

(a) The legislative rule filed in the state register on the twentieth day of July, two thousand five, authorized under the authority of section five, article three, chapter twenty-nine, of this code, modified by the State Fire Commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the second day of November, two thousand five, relating to the State Fire Commission (State Fire Code, 87 CSR 1), is authorized, with the following amendment:

On page twenty-one, following subdivision 14.14.2., by inserting a new subdivision 14.14.3, to read as follows:

Section 4.6.2 of the National Fire Protection Association (NFPA) 495, Explosive Material Code, the provisions of which are adopted by reference in subsection 4.4 of this rule, is amended to provide that persons 18 years and older may be issued a Class G Special “Helper” permit to use explosives.

(b) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand five, authorized under the authority of section five-b, article three, chapter twenty-
nine, of this code, modified by the State Fire Commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of January, two thousand six, relating to the State Fire Commission (State Building Code, 87 CSR 4), is authorized, with the following amendments:

On page two, subdivision 4.1.1, after the words ‘with the following exceptions:’ by unstriking and restoring the words ‘4.1.1.A. Provided; that the section entitled “Fire Prevention” and identified as Section 101.4.6 is deleted and not considered to be a part of this rule.’;

On page five, at the beginning of the second paragraph, by unstriking and restoring the words ‘Section R311.4.3’;

On page five, by striking out the underlined words of the fourth paragraph as follows:

‘Section R311.5.3 Stair Tread and Risers

311.5.3.1 Riser Height - The maximum riser height shall be eight and one-quarter (8 1/4) inches.

311.5.3.2 Tread Depth - The minimum tread depth shall be nine (9) inches.’;

On page ten, at the top of the page, by inserting the following words as underlined words:

‘4.1.7.A. Chapter 11 of the 2003 edition of the International Residential Code for One and Two Family Dwellings, Seventh Printing, entitled “Energy Efficiency”, is deleted and not considered to be a part of this rule. In lieu thereof, the following standards are adopted and made a part of this rule:

And,
On page seventeen, subsection 7.3, by striking out the word 'ordnance' and inserting in lieu thereof the word 'ordinance'.

(c) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section five-b, article three, chapter twenty-nine, of this code, modified by the State Fire Commission 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 six, relating to the State Fire Commission (certification of home inspectors, 87 CSR 5), is authorized with the following amendment:

On page four, subsection 5.2, after the word “qualifications” by striking out the words “and he or she” and inserting a period and the words “The applicant”.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand five, authorized under the authority of section five-b, article three, chapter twenty-nine, of this code, modified by the State Fire Commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the third day of January, two thousand six, relating to the State Fire Commission (standards for the certification and continuing education of municipal, county and other public sector building code officials, building code inspectors and plans examiners, 87 CSR 7), is authorized.

§64-6-2. State Police.

The legislative rule filed in the state register on the twenty-eighth day of July, two thousand five, authorized under the authority of section six, article two, chapter fifteen, of this code, relating to the State Police (West Virginia State Police Grievance Procedure, 81 CSR 8), is authorized.
CHAPTER 142

(Com. Sub. for S. B. 357 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

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 Department of Revenue 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 Insurance Commissioner to promulgate a legislative rule relating to unfair trade practices; authorizing the Insurance Commissioner to promulgate a legislative rule relating to licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the Insurance Commissioner to promulgate a legislative rule relating to the West Virginia Essential Property Insurance Association; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance;
authorizing the Insurance Commissioner to promulgate a legislative rule relating to nonrenewal of property insurance policies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to private passenger automobile and property insurance - biannual rate filing requirements; authorizing the Insurance Commissioner to promulgate a legislative rule relating to replacement of life insurance policies and annuity contracts; authorizing the Racing Commission to promulgate legislative rule relating to greyhound racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to greyhound racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to valuation of active and reserve coal 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 TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

§64-7-2. Racing Commission.

§64-7-3. Tax Commissioner.

§64-7-1. Insurance Commissioner.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten, article two, chapter thirty-three of this code and section four-a, article eleven of said chapter, 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 January, two thousand six, relating to the Insurance Commissioner (unfair trade practices, 114 CSR 14), is authorized, with the following amendment:
On page two, subsection 2.3., by striking out the words “for which premiums were paid by the claimant or on the claimant’s behalf”;

On page two, subsection 2.8., by striking out the words “for which premiums were not paid by the claimant or on the his or her behalf”;

On page two, subsection 2.9., before the word “compensation”, by inserting the word “the”;

On page three, subsection 4.4., by striking out the words “in the policy or set” and, after the words “statute or”, by inserting the word “legislative”;

On page five, subsection 6.1, by adding the following sentence: This section is not intended to conflict with the statutory requirements of the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11, as the same relate to the assertion and investigation of medical professional liability claims.;

On page five, subsection 6.3, after the word “limits” by inserting the words “and, with respect to medical professional liability claims, subject to applicable statutory requirements set forth in the Medical Professional Liability Act, W. Va. Code §§55-7B-1 to 11,”;

On page five, subdivision 6.4.b., after the word “whether”, by striking out the words “or not”;

On page eight, by striking out subsection 6.17. in its entirety and by renumbering the subsequent subsection;

On page eight, after subsection 6.18., by adding a new subsection, designated subsection 6.18, to read as follows:
6.18. Motor vehicle repair shops. — An insurer may furnish to the claimant the names of one or more conveniently located motor vehicle repair shops that will perform the repairs; however no insurer may require the claimant to use a particular repair shop or location to obtain the repairs.

And,

On page eleven, subdivision 7.3., by striking out the words "of the insurer’s choice" and inserting in lieu thereof the words "recommended by the insurer".

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of January, two thousand six, relating to the Insurance Commissioner (licensing and conduct of individual insurance producers, agencies and solicitors, 114 CSR 2), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten, article two, chapter thirty-three of this code and section three, article twenty-a of said chapter, relating to the Insurance Commissioner (West Virginia Essential Property Insurance Association, 114 CSR 21), is authorized.

(d) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten, article two, chapter thirty-three of this code, section three-d, article sixteen of said chapter and section five-b, article twenty-eight of said chapter, relating to the Insurance Commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.
(e) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten, article two, chapter thirty-three of this code and section four-a, article seventeen-a of said chapter, relating to the Insurance Commissioner (nonrenewal of property insurance policies, 114 CSR 74), is authorized.

(f) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four-a, article twenty, chapter thirty-three of this code, relating to the Insurance Commissioner (private passenger automobile and property insurance - biannual rate filing requirements, 114 CSR 75), is authorized.

(g) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section five-a, article eleven, 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 January, two thousand six, relating to the Insurance Commissioner (replacement of life insurance policies and annuity contracts, 114 CSR 8), is authorized.

§64-7-2. Racing Commission.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand six, relating to the Racing Commission (greyhound racing, 178 CSR 2), is authorized, with the following amendment:
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On page forty-two, subsection 51.6., by striking out the
words "were six (6) months of age. Provided, that effective
January 1, 2007, in order to participate in the West Virginia
Greyhound Breeding Development Fund, a greyhound born on
or after that date must be from a litter that was whelped in the
State of West Virginia and remained domiciled in West
Virginia at least until the puppies";

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On page forty-three, subdivision 51.7.7., by striking out the
words "six consecutive months of occupancy in West Virginia
starting from the date of whelping. Provided that effective
January 1, 2007, with regard to a greyhound born on or after
that date, affirm that the greyhound was whelped in West
Virginia and that the greyhound was not removed from West
Virginia to a place outside West Virginia at any time prior to
the completion of';

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On page forty-three, subsection 51.7.8., by striking out the
words "six (6) months of age, it is the owner's or the lessee's
responsibility to notify the Racing Commission within ten (10)
days of removal and that any West Virginia bred greyhound
that is removed to a location outside of West Virginia prior to
the completion of six consecutive months of occupancy in West
Virginia starting from the date of whelping shall be disqualified
by the Racing Commission from participation in the West
Virginia Greyhound Breeding Development Fund. Provided
that effective January 1, 2007, with regard to a greyhound born
on or after that date, affirm that the owner or lessee further
understands that if any West Virginia bred greyhound is
removed from West Virginia prior to";

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On page forty-four, subdivision 51.7.11., after the words
"State for", by striking out the word "at";

On page forty-eight, table 51.4., paragraph 4, by striking
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41 out the word "Virgjnia" and inserting in lieu thereof the word
42 "Virginia";


On page forty-eight, table 51.4., paragraph 5, by striking out the words “both bred and”;  

On page forty-eight, table 51.4., paragraph 5, by striking out the words “six (6)” and inserting in lieu thereof the words “twelve (12)”;  

On page forty-nine, table 51.5., paragraph 5, by striking out the words “both bred and”;  

And,  

On page forty-nine, table 51.5., paragraph 5, by striking out the words “six (6)” and inserting in lieu thereof the words “twelve (12)”.  

§64-7-3. Tax Commissioner.  

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section five, article twelve, chapter eleven of this code, modified by the Tax Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of December, two thousand five, relating to the Tax Commissioner (business registration certificate - suspension for failure to pay personal property taxes, 110 CSR 12D), is authorized.  

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section eleven, article one-a, chapter eleven of this code, relating to the Tax Commissioner (valuation of active and reserve coal property for ad valorem property tax purposes, 110 CSR 11), is authorized, with the following amendment:  

On page seventeen, subparagraph 4.2.3.16., by striking out the words “that is above local drainage”.  

CHAPTER 143

(Com. Sub. for S. B. 353 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 5, 2006.]

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 Department of Transportation 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 use of state road rights-of-way and adjacent areas; authorizing Division of Highways to promulgate a legislative rule relating to transportation of hazardous waste upon roads and highways; authorizing Division of Motor Vehicles to promulgate legislative rule relating to denial, suspension, revocation, restriction or nonrenewal of driving privileges; and authorizing Division of Motor Vehicles promul-
gate legislative rule relating to motor vehicle dealers and other business regulated by the Division.

Be it enacted by the Legislature of West Virginia:

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

§64-8-2. Division of Motor Vehicles.

§64-8-1. Division of Highways.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section three, article seventeen-a, chapter seventeen-c of this code, relating to the Division of Highways (use of state roads’ rights-of-way and adjacent areas, 157 CSR 6), is authorized with the following amendment:

On page two, after subsection 2.16., by inserting a new subsection, designated subsection 2.17, to read as follows:

“2.17. ‘Focal point’ means the location from which an LED, OLED or other illuminated message center, display or sign appears brightest.” and by renumbering the subsequent subsections accordingly;

On page two, subsection 2.24, after the word “slats”, by inserting a comma and the words “or by LED, OLED or other illuminated message center,”;

On page two, subsection 2.24, by striking out the words “lighting devices forming part of the message or border” and inserting in lieu thereof the word “moving”;
19 On page eighteen, paragraph 7.8.d.4., by striking out the words “twenty-four (24) hours” and inserting in lieu thereof the words “eight seconds”;

20 On page eighteen, paragraph 7.8.e.1., line two, by inserting the following words: “For purposes of this section, the illumination of an advertising device containing a message center display does not constitute the use of a flashing, intermittent or moving light. No message center display may include an illumination that is in motion or appears to be in motion or that changes in intensity or exposes its message for less than eight (8) seconds or that has an interval between messages of two (2) seconds or less. No LED, OLED, illuminated message center display or similar device may exceed the following brightness limits measured as candelas per square feet at any focal point on any roadway or berm or any vehicular approach to any roadway:

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<thead>
<tr>
<th></th>
<th>Day</th>
<th>Night</th>
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</thead>
<tbody>
<tr>
<td>Red</td>
<td>300</td>
<td>100</td>
</tr>
<tr>
<td>Green</td>
<td>600</td>
<td>200</td>
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<tr>
<td>Amber</td>
<td>450</td>
<td>150</td>
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<tr>
<td>Blue</td>
<td>800</td>
<td>350</td>
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<tr>
<td>White</td>
<td>550</td>
<td>50</td>
</tr>
<tr>
<td>All color</td>
<td>650</td>
<td>250</td>
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</table>

42 and,

43 On page twenty-nine, by striking out section ten of the rule in its entirety and by creating a new series, designated Title 157, Series 9 of the Code of State Rules, to read as follows:
§157-9-1. General

1.1. Scope. - This legislative rule establishes the procedures and standards for issuance of special crossing permits authorizing certain vehicles to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in W. Va. Code §17C-17A-3 (120,000 pounds) on limited sections of public highways. Special crossing permits may be issued only for vehicles hauling coal or coal by-products in the Coal Resource Transportation Road System.

1.2. Authority. - This rule is issued pursuant to the provisions of W. Va. Code §17C-17A-3.

1.3. Filing Date. -

1.4. Effective Date. -


2.1. An applicant for a special crossing permit must complete an application form developed by the Division of Highways and submit it to a Highways District Permit Clerk within the district wherein the road that will be crossed or traveled is located or where it originates if the route lies within two districts.

2.2. The application must be accompanied by:
2.2.a. A $500 application fee;

2.2.b. A list of all vehicles or combinations of vehicles, including axle weights and spacings and gross vehicle weights, that will be moving on or crossing the highway for which the permit is requested. If a vehicle will be hauling various tonnages of loads, the maximum weights will be listed; and

2.2.c. An estimate of the number of times per day that each listed vehicle or combination of vehicles will cross or travel the route.

2.3. Prior to the issuance of the permit, the applicant must:

2.3.a. Agree, in writing, to pay the actual costs for any necessary upgrading or repair of the public highway, including any necessary traffic control, which the applicant seeks the permit to cross;

2.3.b. Agree to post a bond in an amount of no less than $50,000, as recommended to and approved by the Commissioner of Highways;

2.3.c. Furnish evidence of having at least the minimum amounts of insurance required of “West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2000”, and supplements thereto;

2.3.d. Agree, in writing, to pay for the restoration of the public highway to its original condition after the permit has expired. The original condition of the highway may be documented by the applicant and/or the Division of Highways by photography, video recording, or any other means acceptable to both parties.

3.1 No listed vehicle or combination of vehicles is permitted to haul more than the manufacturer’s weight rating.

3.2. Except as provided in the permit, all listed vehicles or combinations of vehicles must be in compliance with all other specifications given in W. Va. Code §17C.

3.3 All listed vehicles must be identified by vehicle identification number or, if a vehicle identification number is not available, by serial number.

3.4 If any vehicle is replaced during the course of a three year permit period, the applicant must submit supplemental information on each vehicle to the District Permit Clerk. The District Maintenance Engineer and/or Bridge Engineer shall review the supplemental information and may require additional route analysis, route upgrading, an increase in the bond amount, or any other consideration deemed necessary.


4.1. Prior to the issuance of any Special Crossing Permit:

4.1.a. The District Maintenance Engineer(s) in the district(s) in which the proposed route is located will initiate a route analysis to determine the feasibility and potential costs associated with the applicant being permitted to cross or travel the route with any of the listed vehicles or combinations of vehicles. Considerations will include the road surface and any existing height or width restrictions, bridges, culverts, and potential traffic or safety problems;

4.1.b. If there are bridges or culverts on the route, the District Bridge Engineer(s) in the district(s) in which the route is located will initiate a bridge analysis to determine whether these structures can safely bear the weight of the listed vehicles or combinations of vehicles, or whether any will require reinforcement or replacement; and
4.1.c. The District Traffic Engineer(s) in the district(s) in which the route is located will perform an analysis to evaluate potential traffic and safety problems and recommend appropriate traffic control actions and/or devices.

4.2. The Commissioner of Highways may require additional evaluations or analyses in his or her discretion.

4.3. Once all of the necessary analyses have been performed by the appropriate party(ies), all necessary conditions and addendums required have been identified, and a proposed bond amount has been agreed upon, the District Maintenance Engineer will submit the application to the Commissioner of Highways for approval.

§157-9-5. Approval or denial of permit application.

5.1. The Commissioner of Highways may deny the application if there is an existing alternate off-road route available, if the road or any bridge thereon is unsuitable for the load, or if it is determined that the permit cannot be granted without jeopardizing public safety.

5.1.a. The Commissioner of Highways may not approve an application which, in combination with another permit or permit application, would authorize a vehicle or combination of vehicles to operate in excess of the maximum weight allowance specified in W. Va. Code §17C-17A-3 on sections of public highways longer than one-half mile.

5.1.b. In the event the application is denied, the Commissioner of Highways may (at his or her discretion) refund any unexpended portion of the application fee to the applicant.

5.2. The Commissioner of Highways may require additional evaluations or agreements prior to approving any special crossing permit application.
5.3. If the application for a special crossing permit is approved by the Commissioner of Highways, the District Maintenance Engineer(s) shall assure that all necessary conditions and addendums are satisfied before delivering the permit to the applicant.

5.4. Any special crossing permit approved by the Commissioner of Highways must include requirement that any vehicle or vehicles authorized to operate on limited sections of public highways pursuant to this rule may not travel on the section of public highway included in the special crossing permit until or unless all other traffic on the public highway is stopped by flaggers or traffic-control signals and that no other unauthorized vehicles may access the section of public highway until all authorized vehicles have exited the public highway.

§157-9-6. Duration, suspension, revocation or renewal of permit.

6.1. A special crossing permit is valid for three years from the date of issuance.

6.2. While a special crossing permit is in effect, the permit holder shall maintain the road in a condition that is passable to the traveling public. The District Maintenance Engineer(s), accompanied by a representative of the permit holder, shall review the conditions of the approved route at least quarterly, or more frequently, if deemed appropriate by the District Maintenance Engineer(s), to assure the integrity of the roadway and any structures adjacent thereto.

6.3. A special crossing permit may be suspended or revoked by the Commissioner of Highways at any time if the permit holder is found to be in violation of any of the conditions, requirements, addendums or provisions of the permit or to have maintained the roadway or crossing as required by the permit or this rule.
6.4. At the end of three years, a permit holder may apply to the Commissioner of Highways to renew the permit in the same manner as an application for an initial permit. The renewal application fee is $500. The Commissioner of Highways may require the same stipulations, conditions and requirements, including the posting of a bond in excess of $50,000, attendant to the issuance of the original permit or may impose additional stipulations, conditions or requirements as a condition of renewal. The Commissioner of Highways may also, in his or her discretion, require any or all of the route and safety evaluations described in required for issuance of an initial permit or require additional evaluations, analyses or require-ments before renewing the permit.

6.5. The Commissioner may deny renewal of the permit for any of the reasons for which an initial application for a permit may be denied, if the permit holder failed to comply with any of the conditions or requirements of the previous permit or if the permit holder failed to satisfactorily maintain the highway or protect public safety.”

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand five, authorized under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the Division of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.
December, two thousand five, relating to the Division of Motor
Vehicles (denial, suspension, revocation, restriction or
nonrenewal of driving privileges, 91 CSR 5), is authorized with
the following amendment:

On page five, subsection 5.1., line one, after the word
"shall", by inserting a comma;

On page five, subsection 5.1., by striking out the words
"time shall begin to toll from" and inserting in lieu thereof the
words "revocation shall begin on";

On page five, subsection 5.2., by striking out the words
"time shall begin to toll from" and inserting in lieu thereof the
words "suspension shall begin on";

On page six, subsection 7.2., after the words "disqualifica-
tion or", by striking out the word "is" and inserting in lieu thereof the
words "the offense was";

On page nine, subdivision 7.3.e., after the words “W. Va.
Code §17C-6-1” by striking out “(g) or (h)” and inserting in
lieu thereof “(i) or (j)” and a period;

On page nine, subsection 7.4., after the words “involving a
conviction.”, by striking out the remainder of the subsection;

On page eleven, subsection 7.14., by striking out the words
"pertaining to a conviction for a", and inserting in lieu thereof
a comma and the words “which exempt convictions for”;

On page eleven, subsection 7.14., the last line, by striking
out the word “does” and inserting in lieu thereof the words
“from being reported to the Division, do”;

On page fourteen, subdivision 9.4.d., by striking out the
word “shall” and inserting in lieu thereof the word “may”;
On page seventeen, subsection 12.1., after the words “W. Va. Code §17B-3-6” by striking out “(10)” and inserting in lieu thereof “(a)(9)”;


On page eighteen, subsection 13.1., line five, after the words “The Division”, by striking out the word “shall” and inserting in lieu thereof the word “may”;


On page twenty, subsection 15.1., by striking out the words “Dababnah v. West Virginia Board of Medicine, No. 27751 slip op (W. Va. 2000)” and inserting in lieu thereof the words “Dababnah v. West Virginia Board of Medicine, 207 W. Va. 621, 535 S.E.2d 20 (2000)”;


On page twenty, subdivision 15.2.a., after the words “W. Va. Code §17B-3-6” by inserting “(a)”;

On page twenty-one, paragraph 15.2.c.3., following “Subsection” by striking out “5.6” and inserting in lieu thereof “15.6”;

On page twenty-one, paragraph 15.2.c.4., after the word “Subsection”, by striking out “5.7” and inserting in lieu thereof “15.7”;


On page twenty-two, paragraph 15.6.b.1., after the word “Subsection”, by striking out “5.5” and inserting in lieu thereof “15.5”;

On page nineteen, subsection 14.1, at the end of the subsection by inserting the following sentence:

“For the purposes of this rule, a plea of nolo contendere stands as neither an admission of guilt nor a conviction for administrative revocation proceedings.”


On page twenty-two, subdivision 16.2.c., after the word “Commercial”, by inserting “Motor”; and,

On page twenty-five, subdivision 16.3.f., after the word “subdivision”, by striking out “16.2.e.” and inserting in lieu thereof “16.2.f.”
(b) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand five, authorized under the authority of section nine, article two, chapter seventeen-a of this code, modified by the Division of Motor Vehicles 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 five, relating to the Division of Motor Vehicles (motor vehicle dealers and other businesses regulated by the Division of Motor Vehicles, 91 CSR 6), is authorized.

CHAPTER 144

(Com. Sub. for S. B. 299 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

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; 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 certified pesticide applicators; authorizing the Department of Agriculture to promulgate a legislative rule relating to integrated pest management programs in schools and day care centers/facilities; authorizing the Department of Agriculture to promulgate a legislative rule relating to voluntary farmland protection program; authorizing the State Auditor to promulgate a legislative rule relating to state purchasing card program; 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 dental advertising; authorizing the Governor’s Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to motor vehicle stop data collection standard for study of racial profiling; authorizing the Board of Examiners for Licensed Practical Nurses to promulgate a rule relating to policies regulating licensure of the licensed practical nurse; authorizing the Board of Occupational Therapy to promulgate a legislative rule relating to administrative rule of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants; authorizing the Board of Optometry to promulgate a legislative rule relating to rules for the West Virginia Board of Optometry; authorizing the Board of Optometry to promulgate a legislative rule relating to schedule of fees; authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic physician assistants; authorizing the Board of Pharmacy to promulgate a legislative rule relating to ephedrine and pseudoephedrine control; authorizing the Board of Examiners of Psychologists to promulgate a legislative rule relating to qualifications for licensure as a psychologist or a school psychologist; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule
relating to the board; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule relating to standards of ethics; authorizing the Real Estate Appraiser Board to promulgate a legislative rule relating to requirements for licensure and certification; authorizing the Real Estate Appraiser Board to promulgate a legislative rule relating to renewal of licensure and certification; authorizing the Secretary of State to promulgate a legislative rule relating to loan program for purchase of voting equipment, software and services; authorizing the Secretary of State to promulgate a legislative rule relating to public testing of ballot-marking voting systems and precinct ballot-scanning devices; authorizing the Secretary of State to promulgate a legislative rule relating to use of digital signatures, state certificate authority and state repository; authorizing the Statewide Addressing and Mapping Board to promulgate a legislative rule relating to final distribution and use of the statewide addressing and mapping fund; authorizing the Statewide Addressing and Mapping Board to promulgate a legislative rule relating to standard fees for planimetric elevation data; 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 to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-4. Board of Dental Examiners.
§64-9-5. Governor’s Committee on Crime, Delinquency and Correction.
§64-9-8. Board of Optometry.
§64-9-10. Board of Pharmacy.
§64-9-12. Radiologic Technology Board of Examiners.
§64-9-14. Secretary of State.
§64-9-16. Board of Veterinary Medicine.


1 (a) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand five, authorized 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 Commit-
tee and refiled in the State Register on the twenty-third day of
December, two thousand five, relating to the Department of
Agriculture (animal disease control, 61 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand five, authorized under
the authority of section four, article sixteen-a, 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 sixteenth day of
December, two thousand five, relating to the Department of
Agriculture (certified pesticide applicators, 61 CSR 12A), is
authorized.

(c) The legislative rule filed in the State Register on the
twenty-ninth day of July, two thousand five, authorized under
the authority of section four, article sixteen-a, 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 sixteenth day of December, two thousand five, relating to the Department of Agriculture (integrated pest management programs in schools and day care centers/facilities, 61 CSR 12J), is authorized.

(d) The legislative rule filed in the State Register on the twenty-second day of December, two thousand five, authorized under the authority of section twenty, article twelve, chapter eight-a 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 thirteenth day of January, two thousand six, relating to the Department of Agriculture (voluntary farmland protection program, 61 CSR 26), is authorized.


The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section ten-a, article three, chapter twelve of this code, modified by the Auditor 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 five, relating to the Auditor (state Purchasing Card Program, 155 CSR 7), is authorized.


The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article twenty-one-a, chapter nineteen of this code, modified by the State Conservation Committee to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourth day of January, two thousand six, relating to the State Conservation Committee (State Conservation Committee, 63 CSR 1), is authorized.
§64-9-4. Board of Dental Examiners.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized under the authority of section six, article four, chapter thirty of this code, relating to the Board of Dental Examiners (fees established by the board, 5 CSR 3), is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized 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 sixth day of January, two thousand six, relating to the Board of Dental Examiners (dental advertising, 5 CSR 8), is authorized.

§64-9-5. Governor's Committee on Crime, Delinquency and Correction.

The legislative rule filed in the State Register on the twenty-third day of November, two thousand four, authorized under the authority of section three, article two, chapter seventeen-g 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 thirteenth day of January, two thousand six, relating to the Governor's Committee on Crime, Delinquency and Correction (motor vehicles stop data collection standards for the study of racial profiling, 149 CSR 5), is authorized with the following amendment:

TITLE 149
LEGISLATIVE RULE
GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION
§149-5-1. General.

1 1.1. Scope. — This legislative rule establishes standards for
2 the collection, reporting, compilation and analysis of data, for
3 the purpose of studying the possible practice of racial profiling
4 by law enforcement in West Virginia.


6 1.3. Filing Date. —

7 1.4. Effective Date. —

§149-5-2. Definitions.

1 2.1. “Chief executive” means the Superintendent of the
2 State Police; the Chief Conservation Officer of the Division of
3 Natural Resources; the sheriff of any West Virginia county; any
4 administrative deputy appointed by the Chief Conservation
5 Officer of Natural Resources; the chief of any West Virginia
6 municipal law-enforcement agency; or the duly authorized
7 designee of any chief executive.

8 2.2. “Composition of patrol area” means the demographic
9 description of the population in the patrol area to include
10 elements of ethnicity, national origin, gender and age.

11 2.3. “County” means any one of the fifty-five major
12 political subdivisions of the state.

13 2.4. “Driver” or “operator” means the person who drives or
14 is in actual physical control of a motor vehicle upon a highway
15 or who is exercising control over or steering a vehicle being
16 towed by a motor vehicle.
2.5. “Governor’s Committee on Crime, Delinquency and Correction” or “Governor’s committee” means the committee established as a state planning agency pursuant to W. Va. Code §15-9-1.

2.6. “Gross data” means aggregate data regarding the information obtained pursuant to section 3 of this rule.

2.7. “Law-enforcement agency” means every West Virginia state, county or municipal agency with officers who are authorized to direct or regulate traffic or to make arrests or issue citations or warnings for violations of traffic laws and ordinances.

2.8. “Law-enforcement officer” or “officer” means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality of the state, including persons employed as campus police officers at state institutions of higher education and those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority.

2.9. “Minority group” means individuals of any ethnic descent, including, but not limited to, African-American, Hispanic, Native American, Middle Eastern, Asian or Pacific Islander.

2.10. “Municipality” means any incorporated town, village or city whose boundaries lie within the geographic boundaries of the state.

2.11. “Originating agency Identifier, or ORI Number” means the standard identification number assigned by the Federal Bureau of Investigation to law-enforcement and other agencies that submit data required for criminal justice purposes.
2.12. "Patrol area" means a clearly defined geographic area, identified by a number assigned by the chief law-enforcement official, that is established for the general purpose of providing a visible law enforcement presence in the area, in order to: (1) secure property and to protect the public from the risks of damage or injury arising from criminal activity; (2) respond to emergency and non-emergency demands of citizens in a timely manner; (3) conduct prevention and other proactive patrol tasks effectively; and (4) conduct all other patrol tasks effectively, including traffic control and special missions work.

2.13. "West Virginia Motor Vehicle Stop Form", or "MVSF", means the form developed by the Division of Motor Vehicles for collecting and reporting data for the study of racial profiling.

§149-5-3. Data collection.

3.1. Operator Information Collected.

3.1.a. Beginning January 1, 2007, each time a law-enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5 of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but must file the completed form with his or her law-enforcement agency before the officer goes off duty.

3.1.b. A law-enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section only when the operator has been stopped for violating a motor vehicle statute or ordinance. A law-enforcement officer is not required to record such information as a result of a nonviolation stop, even if the initial nonviolation stop results in a citation or arrest.
3.2. Passenger Information Collected.

3.2.a. Beginning January 1, 2007, each time a law-enforcement officer stops the operator of a motor vehicle for a violation of any motor vehicle statute or ordinance, and as a result, conducts a search of a passenger in the vehicle, the officer shall record, on the West Virginia Motor Vehicle Stop Form appended to this rule, the information required to be collected pursuant to subsection 5 of this section. The officer may complete the Motor Vehicle Stop Form during or immediately after the stop, but shall file the completed form with his or her law-enforcement agency before the officer goes off duty.

3.2.b. A law-enforcement officer is required to record the information required to be collected pursuant to subsection 5 of this section with regard to a passenger who has been searched only when the operator of the vehicle has been stopped for violating a motor vehicle statute or ordinance. A law-enforcement officer is not required to record such information as a result of a nonviolation stop, even if the initial nonviolation stop results in a citation or arrest.

3.3. West Virginia Motor Vehicle Stop Form (MVSF). — The MVSF shall allow for the recording of all of the information required to be collected by subsection 4 of this section and at a minimum be developed in hard copy format; however, nothing in this rule prohibits a law-enforcement agency from completing and/or submitting the information required to be collected in an electronic format, if a protocol for electronic filing is developed by the Division of Motor Vehicles. This form shall:

3.4. MVSF Components. — The MVSF shall allow a law-enforcement officer to collect and record the following information.
3.4.a. A unique identifier (i.e. numeric, alphanumeric, barcode, etc.) which will distinguish one from all others.

3.4.b. The law-enforcement agency’s complete Originating Agency Identifier (ORI number), or an abbreviated version of that identifier singularly unique to that particular law-enforcement agency.

3.4.c. The identity of each individual law-enforcement officer within his or her law-enforcement agency. The chief executive of the law-enforcement agency shall assign a unique four (4) digit identifier to each law-enforcement officer within his or her agency for this purpose.

3.4.d. The month, day and year of the stop.

3.4.e. The approximate hour and minute of the stop.

3.4.f. The approximate duration of the stop in hours and minutes.

3.4.i. The county in which the stop took place.

3.4.j. The location of stop by patrol area.

3.4.k. The traffic violation that was the primary reason for the stop to be indicated as follows:

3.4.k.1. Code violations:

3.4.k.1.A. Red light/stop sign;

3.4.k.1.B. Speeding (<10mph over);

3.4.k.1.C. Speeding (>10mph over);

3.4.k.1.D. Lane violation/failure to signal;

3.4.k.1.E. Other moving violation; or,
3.4.k.1.F. Other nonmoving violation.

3.4.k.2. Penal code violations:

3.4.k.2.A. Nuisance/vice;

3.4.k.2.B. Suspicious circumstances;

3.4.k.2.C. Be on the lookout (BOLO)/wanted persons;

3.4.k.2.D. Property crime;

3.4.k.2.E. Violent crime; or,

3.4.k.2.F. Local ordinance.

3.4.1. Disposition. — One of the following dispositions of the stop:

3.4.1.1. Citation

3.4.1.2. Warning

3.4.1.3. No action

3.4.m. The perceived identifying characteristics of the operator stopped, including:

3.4.m.1. The age of the operator

3.4.m.2. Whether the operator was male or female.

3.4.m.3. Whether the operator was:

3.4.m.3.A. White (W);

3.4.m.3.B. Black/African American (B/AA);

3.4.m.3.C. Asian/Pacific Islander (A/PI);
3.4.m.3.D. Native American (NA);

3.4.m.3.E. Middle Eastern (ME); or,

3.4.m.3.F. Other (Oth).

3.4.m.4. Whether the operator was:

3.4.m.4.A. Hispanic/Latino (H/L); or,

3.4.m.4.B. Non-Hispanic/Latino (NH/L).

3.4.n. Whether a search was performed as a result of the stop and, if so:

3.4.n.1. The authority for the search to be indicated as follows:

3.4.n.1.A. Consent;

3.4.n.1.B. Reasonable Suspicion/Weapon;

3.4.n.1.C. Incident to Arrest;

3.4.n.1.D. Inventory;

3.4.n.1.E. Probable Cause;

3.4.n.1.F. Plain View;

3.4.n.1.G. Probation/Parole Waiver; and,

3.4.n.1.H. Other.

3.4.n.2. Whether the search involved:

3.4.n.2.A. Officer;

3.4.n.2.B. Canine Unit;
3.4.n.2.C. Portable Breath Analyzer;
3.4.n.2.D. Drug Test Kit;
3.4.n.2.E. Warrant Check; and,
3.4.n.2.F. Other.

3.4.n.3. The persons/items searched, to be indicated as:
3.4.n.3.A. Vehicle;
3.4.n.3.B. Driver;
3.4.n.3.C. Passenger(s);
3.4.n.3.D. Personal Effects; and,
3.4.n.3.E. No Search Conducted.

3.4.n.4. The type of any contraband discovered or seized as a result of the search, to be indicated as follows:
3.4.n.4.A. None;
3.4.n.4.B. Illegal Drugs;
3.4.n.4.C. Drug Paraphernalia;
3.4.n.4.D. Alcohol;
3.4.n.4.E. Firearm(s);
3.4.n.4.F. Other Weapon(s);
3.4.n.4.G. Currency;
3.4.n.4.H. Stolen Property; and,
3.4.n.4.I. Other.
3.4.n.5. If the search was of a passenger in the motor vehicle, the age, gender and perceived race and ethnicity of the passenger searched.

3.5. Instructions detailing how an individual law-enforcement officer should complete and submit the form may be included on the MVSF itself, or provided to law-enforcement agencies or officers as an attachment.

§149-5-4. Designation of patrol area.

4.1. Patrol area of stop. The chief executive of every law-enforcement agency in the state shall establish one or more “patrol areas” as defined in section 2.9A of this rule. The boundaries shall be easily recognizable to the law-enforcement officer and the designation of the patrol area shall be identified by up to a three digit number that shall be entered by the officer on the Motor Vehicle Stop Form. The boundaries and designations of patrol areas shall be provided to all officers under the control of the agency and forwarded to the Governor’s Committee on Crime Delinquency and Correction for utilization in preparing the report to the legislature required by West Virginia Code.

4.2. Requirements for boundaries of patrol areas. The boundaries of the patrol areas shall be drawn to allow the determination of population demographics of the Patrol Area as a whole. Patrol areas may include whole or partial census tracts and whole census blocks. The maps provided to officers need not show this specific information, but only the boundaries of the patrol area using natural landmarks such as streets, streams, railroad tracks, or other boundaries as may be generally known to a community. Maps of patrol areas shall be forwarded to the Governor’s committee for approval of conformance to this subsection.
4.3. County level law-enforcement agencies in counties with a population of 20,000 or fewer may designate the entire county as one patrol area. Law-enforcement agencies in cities or towns with a population of 5,000 or fewer may designate the entire city or town as one patrol area. Law-enforcement agencies with statewide jurisdiction shall utilize patrol areas established by the county of the stop.

§149-5-5. Training.

The chief executive officer of an law-enforcement agency shall, prior to January 1, 2007, provide to each law-enforcement officer of his or her agency appropriate training on the proper completion of the Motor Vehicle Stop Form. All training shall be based on the instructions developed by the Division of Motor Vehicles pursuant to subsection 3 of this rule. Additional and or ongoing training may be required by the law-enforcement agency if improper reporting is identified.

§149-5-6. Data reporting.

6.1. Beginning January 1, 2007, each law-enforcement agency in this state shall submit completed MVSFs to the Division of Motor Vehicles, via United States Postal Service or by any other reputable mail delivery service, hand-delivery or by electronic means, if authorized by the Division of Motor Vehicles. MVSFs must be received by the Division of Motor Vehicles no later than close of business, normal operating hours, on the fifteenth (15th) day following the end of the reporting calendar month during which the information recorded on the form was collected.

6.2. All MVSFs shall be completed correctly, be free of dirt and debris and be submitted in usable condition for the purposes outlined in this rule. Incomplete or rejected MVSF’s will be returned to the law-enforcement agency for completion, correction and resubmission.
6.3. In furtherance of his or her responsibility to ensure that the requirements of this section are met, the chief executive shall periodically audit and review MVSFs submitted by law-enforcement officers within his or her agency to ensure that the facts surrounding traffic stops are not being intentionally misrepresented.

6.4. Failure to comply with the requirements of this section may subject a law-enforcement agency to the sanctions provided in West Virginia Code §17G-2-2.

§149-5-7. Receipt and retention of MVSF.

MVSF Receiving and Retaining. — The Division of Motor Vehicles shall establish a written policy designed to address the reasonably foreseeable complications which may arise as a result of receiving and retaining MVSFs submitted by a law-enforcement agency, whether in hard copy or electronic format. This policy may change, from time to time, and at the discretion of the Division of Motor Vehicles, as necessity dictates. This policy shall include, but not be limited to:

7.1. A mechanism for identifying the time, day, date and year the MVSF was received by the Division of Motor Vehicles;

7.2. A mechanism for maintaining accurate and easily accessible data regarding the reporting habits of individual law-enforcement agencies; and,

7.3. The identification of an appropriate and logistically feasible time period to retain MVSFs submitted in hard copy format; as well as any data stored electronically as a result of this rule.

§149-5-8. Data limitations and confidentiality.
8.1. Any and all data collected, reported, compiled and analyzed pursuant to this rule may be used only for the purposes outlined in this rule.

8.2. Except as provided for in section 8 of this rule, no official of the Division of Motor Vehicles, the Governor's committee or a law-enforcement agency may release information from an MVSF regarding the identity of any individual law-enforcement officer. The Governor's committee and the chief executive of a law-enforcement agency shall make appropriate safeguards to protect the identity of individual law-enforcement officers collecting data required by this rule at all times.


9.1. The chief executive of a law-enforcement agency may request from the Division of Motor Vehicles release of data regarding his or her law-enforcement agency and law-enforcement officers. The request must be in writing and must be received by the Division of Motor Vehicles no sooner than thirty (30) days after the end of the calendar month for which the data is being requested.

9.2. At a minimum, the data shall be organized in such a manner as to allow the chief executive to review the information collected from the MVSF by his or her particular agency and officers for a period of at least one calendar month.

§149-5-10. Division of Motor Vehicles responsibilities.

The Division of Motor Vehicles and the Governor's Committee on Crime, Delinquency and Correction have reduced to writing in a memorandum of understanding the duties required of the DMV pursuant to §17G-2-3. This memorandum contains the protocols by which the Division of
Motor vehicles will collect the data required and by which the data will be conveyed to the Governor’s committee for analysis and preparation of its annual report.


The Governor’s committee shall analyze and report its finding pursuant to West Virginia Code §170-2-3. The Criminal Justice Statistical Analysis Center, a unit of the Governor’s committee, shall use its discretion to determine the methodology necessary to meet the analytic reporting requirements of §170-2-3 consistent with the data made available to it.


The legislative rule filed in the State Register on the fifth day of July, two thousand five, authorized under the authority of section five, article seven-a, chapter thirty of this code, modified by the State Board of Examiners for Licensed Practical Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the first day of November, two thousand five, relating to the State Board of Examiners for Licensed Practical Nurses (policies regulating licensure of the licensed practical nurse, 10 CSR 2), is authorized, with the following amendment:

On page two, section 8, at the beginning of the second sentence in the section, by striking out the words “If the board participates” and inserting in lieu thereof the words “Should the board participate”; and,

On page three, subsection 11.2, in the second sentence, by striking out the words “marriage certificate or divorce decree” and inserting in lieu thereof the words “marriage certificate, divorce decree or an order of a court of competent jurisdiction”.

The legislative rule filed in the State Register on the twenty-seventh day of June, two thousand five, authorized under the authority of section six, article twenty-eight, chapter thirty of this code, modified by the Board of Occupational Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of November, two thousand five, relating to the Board of Occupational Therapy (administrative rule of the Board of Occupational Therapy and licensure of occupational therapists and occupational therapy assistants, 13 CSR 1), is authorized, with the following amendment:

On page two, subdivision 2.8.b, after the words “direct line of” by striking out the word “site” and inserting in lieu thereof the word “sight”;

On page three, subsection 3.4, by striking out the words “one hundred dollars ($100.00)” and inserting in lieu thereof the words “fifty dollars ($50.00)”;

On page six, subsection 9.2.a.1, by striking out the words “for ninety (90) days from date of issuance of the limited permit” and inserting in lieu thereof the words “until the date on which the results of the next qualifying examination have been made public”;

On page six, subsection 9.2.b.1, by striking out the words “for ninety (90) days from the date of issuance of the limited permit” and inserting in lieu thereof the words “one (1) year or until eligibility to sit for the certification exam is withdrawn or the results of the certification exam have been made public”; and,

On page twelve, subsection 13.3, after the words “licensed Occupational Therapist supervising” by striking out the word “and” and inserting in lieu thereof the word “an”.
§64-9-8. Board of Optometry.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section three, article eight, chapter thirty of this code, relating to the Board of Optometry (rules for the West Virginia Board of Optometry, 14 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section three, article eight, chapter thirty of this code, relating to the Board of Optometry (schedule of fees, 14 CSR 5), is authorized.


The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section one, article fourteen-a, chapter thirty of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of January, two thousand six, relating to the Board of Osteopathy (osteopathic physician assistants, 24 CSR 2), is authorized with the following amendments:

On page four, subdivision 2.6.1, by striking the words “three (3) physician assistants” and inserting in lieu thereof the following “two (2) physician assistants”;

On page eleven, subdivision 2.12.8., line one, after the word “assistant”, by inserting the word “not”;

On page sixteen, subdivision 2.14.1, by striking the subdivision in its entirety and inserting in lieu thereof the following:
“2.14.1 Each osteopathic physician assistant, as a condition of biennial renewal of osteopathic physician assistant license, shall provide written documentation of participation in and successful completion of a minimum of twenty (20) hours of continuing education, during each year of the two year period, in courses approved by the Board for the purposes of continuing education of osteopathic physician assistants.”.

§64-9-10. Board of Pharmacy.

The legislative rule filed in the State Register on the seventh day of July, two thousand five, authorized under the authority of sections six and seven, article ten, chapter sixty-a of this code, modified by the Board of Pharmacy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eleventh day of October, two thousand five, relating to the Board of Pharmacy (ephedrine and pseudoephedrine control, 15 CSR 11), is authorized.


The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized under the authority of section six, article twenty-one, chapter thirty of this code, modified by the Board of Examiners of Psychologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourth day of January, two thousand six, relating to the Board of Examiners of Psychologists (qualifications for licensure as a psychologist or a school psychologist, 17 CSR 3), is authorized, with the following amendments:

On page one, subsection 2.2., by striking out the word “institute” and inserting in lieu thereof the word “institution”;

On page five, subsection 8.4., after the word “as” by striking out the word “a”;
On page seven, paragraph 12.1.d., by striking out “@” and inserting in lieu thereof a quotation mark;

And,

On page seven, section 12.7., by striking out the word “loner” and inserting in lieu thereof the word “longer”.

§64-9-12. Radiologic Technology Board of Examiners.

(a) The legislative rule filed in the State Register on the twenty-first day of July, two thousand five, authorized under the authority of section five, article twenty-three, chapter thirty of this code, relating to the Radiologic Technology Board of Examiners (rule of the West Virginia Radiologic Technology Board of Examiners, 18 CSR 1), is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand five, authorized 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-eighth day of December, two thousand five, relating to the Radiologic Technology Board of Examiners (standard of ethics, 18 CSR 5), is authorized, with the following amendment:

On page two, at the end of section 4.1, after the words “comfort of patients.” by inserting the words “The individual shall:”;

On page two, subsection 4.1.1, by striking the words “The individual shall”;

On page two, subsection 4.1.1, after the words “in a professional manner,” by striking out the word “responds” and inserting in lieu thereof the word “respond”;
On page two, subsection 4.1.1, after the words “to patient needs and” by striking out the word “supports” and inserting in lieu thereof the word “support”;

On page two, subsection 4.1.4, after the words “theoretical knowledge and concepts,” by striking out the word “uses” and inserting in lieu thereof the word “use”;

On page two, subsection 4.1.4, after the words “they were designed, and” by striking out the word “employs” and inserting in lieu thereof the word “employ”;

On page two, subsection 4.1.5, after the words “assess situations;” by striking out the word “exercises” and inserting in lieu thereof the word “exercise”;

On page two, subsection 4.1.5, after the words “discretion and judgment;” by striking out the word “assumes” and inserting in lieu thereof the word “assume”;

On page two, subsection 4.1.5, after the words “professional decisions; and” by striking out the word “acts” and inserting in lieu thereof the word “act”;

On page two, subsection 4.1.6, after the words “treatment of the patient and” by striking out the word “recognizes” and inserting in lieu thereof the word “recognize”;

On page two, subsection 4.1.7, by striking out the first word “uses” and inserting in lieu thereof the word “use”;

On page two, subsection 4.1.7, after the words “equipment and accessories,” by striking out the word “employs” and inserting in lieu thereof the word “employ”;

On page two, subsection 4.1.7, after the words “techniques and procedures,” by striking out the word “performs” and inserting in lieu thereof the word “perform”;
On page two, subsection 4.1.7, after the words "standard of practice, and" by striking out the word "demonstrates" and inserting in lieu thereof the word "demonstrate";

On page two, subsection 4.1.8, after the words "appropriate to the profession and" by striking out the word "protects" and inserting in lieu thereof the word "protect";

On page two, subsection 4.1.9, after the words "course of professional practice," by striking out the word "respects" and inserting in lieu thereof the word "respect";

On page three, section 5.1, after the words "for all present Licensees," by striking out the word "Permittee"s" and inserting in lieu thereof the word "Permittees";

On page three, at the end of section 5.1, after the words "An individual" by striking out the word "shall" and inserting in lieu thereof the word "may";

On page three, subdivision 5.1.2(a), after the words "examination of the Board;" and before the words "disclosing information" by striking out the word "or";

On page three, subdivision 5.1.2(a), after the words "understood by the recipient as" by striking out the comma and the words "any portion of or";

On page four, subdivision 5.1.2(c), after the word "impe- sonating" by striking out the word "a" and inserting in lieu thereof the word "an";

On page four, subdivision 5.1.5(a), after the words "rule or regulation exists," by inserting the words "a departure from or failure to conform";

On page four, subdivision 5.1.5(b), after the words "danger to a" by striking out the word "patient's" and inserting in lieu thereof the word "patient's";
On page five, subsection 5.1.7, after the words “reasonable skill and safety” by striking out the words “to patients”;

On page five, subsection 5.1.7, after the words “any other material” by striking out the semicolon inserting in lieu thereof a comma;

On page five, subsection 5.1.9, after the words “harm the public; or” by striking out the word “demonstrating” and inserting in lieu thereof the word “demonstrate”;

On page five, subsection 5.1.10, after the words “demeaning to a patient” by striking out the semicolon and inserting in lieu thereof a comma;

On page five, subsection 5.1.10, after the words “to a patient, or” by striking out the word “engaging” and inserting in lieu thereof the word “engage”;

On page five, in the last sentence of subsection 5.1.10 after the word “This” by inserting the word “subsection”;

On page five, subsection 5.1.12, after the words “or otherwise” by striking out the word “participating” and inserting in lieu thereof the word “participate”;

On page five, subsection 5.1.14, after the words “assist, advise or” by striking out the word “allowing” and inserting in lieu thereof the word “allow”;

On page five, subsection 5.1.14, after the words “appropriate state permit” by striking out the comma;

On page six, section 5.2, by striking the words “Convictions, criminal proceedings or military court-martials.” and inserting in lieu thereof the words “An individual must report convictions, criminal proceedings or military court-martials as set forth in this section.”;
On page six, subsection 5.2.1, after the words “abuse related violations” by striking out the words “must be reported”; 

On page six, subsection 5.2.2, after the words “nolo contendere” by striking out the words “must be reported”; and, 

On page six, subsection 5.2.3, after the words “patient-related infractions” by striking out the words “must be reported”.


(a) The legislative rule filed in the State Register on the eleventh day of July, two thousand five, authorized under the authority of section seven, article thirty-eight, chapter thirty of this code, modified by the Real Estate Appraiser Licensure and Certification Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand six, relating to the Real Estate Appraiser Licensure and Certification Board (requirements for licensure and certification, 190 CSR 2), is authorized.

(b) The legislative rule filed in the State Register on the eleventh day of July, two thousand five, authorized under the authority of section nine, article thirty-eight, chapter thirty of this code, relating to the Real Estate Appraiser Licensure and Certification Board (renewal of licensure and certification, 190 CSR 3), is authorized.

§64-9-14. Secretary of State.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section forty-eight, article one, chapter three of
this code, modified by the Secretary of State to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on the tenth day of January,
two thousand six, relating to the Secretary of State (loan
program for purchase of voting equipment, software and
services, 153 CSR 10), is authorized, with the following
amendment:

On page one, subsection 1.1., line one, after the words
“administration of the”, by inserting the words “County
Assistance Voting Equipment Fund (‘Fund’)”;

On page one, subsection 1.1., by striking out the words “S.
B. 3002” and inserting in lieu thereof the words “W. Va. Code
§3-1-48”;  

On page one, section 2., by striking out the words “County
commissions” and inserting in lieu thereof the words “A county
commission”;  

On page one, section 2., after the word “loan”, by inserting
the words “from the Fund”;  

On page one, section 2., after the words “related services”,
by inserting a comma;  

On page one, subsection 3.1., after the words “requesting a
loan”, by striking out the comma and inserting the words “from
the Fund”;  

On page one, subdivision 3.2.a., by striking out the word
“County” and inserting in lieu thereof the word “county”;  

On page one, subdivision 3.2.c., after the word “funds”, by
inserting a comma;  

On page two, section 4.1, by striking out the words “County
commissions” and inserting in lieu thereof the words “A county
commission”;
34 On page two, section 4.1, after the words “obtain a loan”,
35 by inserting the words “from the Fund”;
36 On page two, subsection 4.2., after the words “fifty
37 percent” by inserting “(50%)”;
38 On page two, subsection 4.2., by striking out the words
39 “required by the county commission”;
40 On page two, subsection 4.2., after the words “Commission
41 that” by striking out the word “it” and inserting in lieu thereof
42 the words “the county commission”;
43 On page two, section 4.3, by striking out the words “County
44 commissions” and inserting in lieu thereof the words “A county
45 commission”;
46 On page two, section 5., by striking out the word “only”;  
47 On page two, section 5., after the words “approved by the
48 State Election Commission”, by inserting the word “only”;
49 On page two, section 5., after the word “services”, by
50 inserting the words “and only”;
51 On page two, section 5., after the words “if certified”, by
52 inserting a comma and the words “when necessary,”;
53 On page two, section 5., by striking out the words “if
54 applicable”;  
55 On page two, section 6., by striking out the word “con-
56 tracted” and inserting in lieu thereof the word “contract”; 
57 On page three, section 6., after the word “county”, by
58 inserting a period, striking out the words “and the” and
59 inserting in lieu thereof the word “The”;
On page three, subsection 7.1., after the words “forty-five days”, by striking out the words “of receipt”;

On page three, subsection 7.1., after the words “a denial”, by striking out the words “shall have” and inserting in lieu thereof the word “has”;

On page three, subsection 7.2., after the word “loan” by striking out the colon and the words “Provided that” and inserting in lieu thereof the word “if”;

On page three, subsection 7.3., by striking out the words “a period not to exceed five years or”;

On page three, subsection 7.3., after the words “length of the contract”, by inserting a comma and the words “not to exceed five years”;

On page three, subsection 7.3., after the word “services”, by inserting a period and striking out the remainder of the sentence;

On page three, subsection 7.4., after the words “basis for”, by striking out the word “repayment”;

On page three, subsection 7.4., after the word “allow”, by inserting the word “a”;

On page three, subsection 7.4., by striking out the words “continuation for a period of” and inserting in lieu thereof the words “to continue for”;

On page three, subsection 7.4., by striking out the word “total”;

On page three, section 8., after the words “one request” by striking out the comma and the words “will be” and inserting in lieu thereof the word “is”;
On page three, section 8., after the words “time of the request” by changing the comma to a period, striking out the word “the” and inserting in lieu thereof the word “The”;

On page three, section 8., line five, after the words “presidential election”, by changing the colon to a period and by striking out the remainder of the section;

On page three, section 9., after the words “The loan”, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page three, section 9., after the words “apply for”, by striking out the words “matching funds” and inserting in lieu thereof the words “a loan”;

On page four, section 10., after the words “voting system” by striking out the comma and the words “shall be” and inserting in lieu thereof the word “is”;

On page four, section 10., after the words “loan proceeds”, by striking out the comma and the words “that will be available to such counties under this loan program according to section 8 of this rule” and inserting in lieu thereof the words “available to any such county”;

On page four, subsection 11.3., by placing quotation marks around the words “Nonpayment of the loan installments” and by striking out the words “shall mean” and inserting in lieu thereof the word “means”;

On page four, subsection 11.4., by striking out the word “Any” inserting in lieu thereof the word “The Secretary of State will cease any”; and,
On page four, subsection 11.4., by striking out the words "shall be" and inserting in lieu thereof the word "is".

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of sections nine-a and nine-b, article four-a, chapter three of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of January, two thousand six, relating to the Secretary of State (public testing of ballot-marking voting systems and precinct ballot-scanning devices, 153 CSR 11), is authorized, with the following amendment:

On page one, subsection 1.1., after the words "ballot scanning", by striking out the words "the approval and use of various types of vote recording devices" and inserting in lieu thereof the word "systems";

On page one, subdivision 2.1.a., after the words "system ballot", by striking out the comma;

On page one, section 3., by striking out the word "will" and inserting in lieu thereof the word "shall"; and,

On page one, subsection 5.1., by striking out the word "annually" and inserting in lieu thereof the words "every two years".

(c) The legislative rule filed in the State Register on the twenty-first day of June, two thousand five, authorized under the authority of section three, article three, chapter thirty-nine-a of this code, modified by the Secretary of State to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of January, two thousand six, relating to the Secretary of State (use of digital signatures, state certificate authority and state repository, 153 CSR 30), is authorized.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section five, article one, chapter twenty-four-e of this code, modified by the Statewide Addressing and Mapping Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of October, two thousand five, relating to the Statewide Addressing and Mapping Board (final distribution and use of the statewide addressing and mapping fund, 169 CSR 3), is authorized, with the following amendment:

On page two, subsection 2.1, following the words “in the fund” and the comma by striking the words “in the same proportions and manner as wireless enhanced 911 fees are distributed to county commissions under W.Va. Code §24-6-6b for the year in which the remaining amounts from the fund are distributed” and inserting the words “according to the formula contained in W.Va. Code §24-6-6b(d)(1): Provided, That the provisions of §24-6-6b(d)(1) by which a county may receive a special eight and one half tenths of one percent because of the date upon which it enacted its 911 ordinance are not applicable to the apportionment of funds transferred pursuant to this rule.”.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section nine, article one, chapter twenty-four-e of this code, modified by the Statewide Addressing and Mapping Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eleventh day of October, two thousand five, relating to the Statewide Addressing and Mapping Board (standard fees for planimetric elevation data, 169 CSR 4), is authorized, with the following amendments:
On page three, subdivision 2.2.a., following the word "Fund" and the period, by striking out the remainder of subdivision 2.2.a.; and,

On page three, subdivision 2.2.b., following the word "purposes" and the period, by striking out the remainder of subdivision 2.2.b.

§64-9-16. Board of Veterinary Medicine.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized 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 seventh day of October, two thousand five, relating to the Board of Veterinary Medicine (organization and operation, 26 CSR 1), is authorized, with the following amendments:

On page ten, subsection 9.4, by striking out the underlined words "or any authorized reporting agent";

On page eleven, subsection 9.5, by striking out the word "investigation" and striking out the underlined words "legal fees"; and,

On page eleven, subsection 9.5, by striking out the words "to the veterinarian who was the subject of disciplinary action" and inserting in lieu thereof the words "to a veterinarian against whom disciplinary action was taken."

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized 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 Commit-
AN ACT to amend and reenact article 10, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce 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 Forestry to promulgate a legislative rule relating to ginseng; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to safety provisions for clearing crews; 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 boating; authorizing the Division of Natural Resources to promulgate a legislative rule relating to the rules governing the public use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division; authorizing the Division of Natural Resources to promulgate a legislative rule relating to terms defining the terms to be used concerning all hunting and trapping rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wild boar hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to special waterfowl hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to falconry; authorizing the Division of Natural Resources to promulgate a legislative rule relating to lifetime hunting, trapping and fishing licenses; authorizing the Division of Natural Resources to promulgate a legislative rule relating to miscellaneous permits and licenses; authorizing the Division of Labor to promulgate a legislative rule relating to the West Virginia Manufactured Housing Construction and Safety Standards Board; authorizing the Division of Labor to promulgate a legislative rule relating to nurse overtime complaints; and authorizing the Division of Tourism to promulgate a legislative rule relating to the Direct Advertising Grants Program.

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.

PROMULGATE LEGISLATIVE RULES.

§64-10-1. Division of Forestry.
§64-10-3. Division of Natural Resources.
§64-10-4. Division of Labor.
§64-10-5. Division of Tourism.

§64-10-1. Division of Forestry.

The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section three, article one-a, chapter nineteen of this code, modified by the Division of Forestry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of October, two thousand five, relating to the Division of Forestry (Ginseng, 22 CSR 1), is authorized, with the following amendment:

On page six, by striking out subsection 13.1 in its entirety and renumbering the remaining subsections.


The legislative rule filed in the State Register on the sixteenth day of March, two thousand five, authorized under the authority of section six, article one, chapter twenty-two-a of this code, modified by the Office of Miners Health, Safety and Training to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the tenth day of June, two thousand five, relating to the Office of Miners Health, Safety and Training (Safety provisions for clearing crews, 56 CSR 2), is authorized, with the following amendments:
On page twelve, section twenty-one, following subsection 21.2, by inserting the following:

“21.3. The employer shall provide annual continuing training of at least eight hours covering the subjects listed in subdivision 21.1.b for each employee, including supervisors, at no cost to the employee.”

§64-10-3. Division of Natural Resources.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section twenty-three-a, article two, 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 October, two thousand five, relating to the Division of Natural Resources (Commercial whitewater outfitters, 58 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of sections thirteen, twenty-two, twenty-two-a and twenty-three, article seven, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of October, two thousand five, relating to the Division of Natural Resources (Boating, 58 CSR 25), is authorized.

(c) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of October, two thousand five, relating to the Division of
Natural Resources (Public use of West Virginia State Parks, State Forests and State Wildlife Management Areas under the Division of Natural Resources, 58 CSR 31), is authorized with the amendments set forth below:

On page one, subsection 1.1, after the words, “Division of Natural Resources” by inserting the words “Parks and Recreation Section”;

On page three, subsection 2.21, after the words “Chief Logan,” by changing the comma to a colon, striking out “except in the” and inserting following: “Provided, That beer, wine and alcoholic beverages may be served in the restaurant,”;

On page three, subsection 2.21, after the words “conference center” by inserting the words “without prior written authorization from the Director”;

And,

On page four, subsection 2.21, after the words “prohibited by posted signs” by changing the period to a colon and inserting the following: “Provided, That any person, group or association sponsoring a private party at the multi-purpose log barn at Prickett’s Fort State Park may provide beer, wine, liquor and all other alcoholic beverages for guests at a private party as long as the party is not open to the general public.”

(d) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of October, two thousand five, relating to the Division of Natural Resources (Terms defining the terms to be used concerning all
hunting and trapping rules, 58 CSR 46), is authorized, with the following amendment:

On page two, subsection 2.10, after the words “Individual Permanently Disabled in the Lower Extremities” by striking out the remainder of subsection 2.10 and inserting in lieu thereof the following: “means an individual who is permanently and totally disabled due to paralysis or disease in the lower half of the body, which makes it impossible to ambulate successfully more than two hundred feet without assistance”.

(e) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (Wild boar hunting, 58 CSR 52), is authorized.

(f) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (Special waterfowl hunting, 58 CSR 58), is authorized.

(g) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, relating to the Division of Natural Resources (Miscellaneous permits and licenses, 58 CSR 64), is authorized, with the following amendments:

On page four, subsection 3.6, by striking out the words “A public hearing will be conducted” and inserting in lieu thereof the words “The Division of Natural Resources will conduct a public hearing”;

On page four, subsection 3.7, after the period, by inserting the following: “If the chief accepts a recommendation to deny
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87 the granting of a permit or license, he must notify the applicant
88 of the denial and the reasons therefor." and by striking out
89 subdivision 3.7.1 in its entirety;
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On page four, subsection 4.1, by striking out the words
"Except as provided in Section 4.1.1 of this rule, all" and
inserting in lieu thereof the words "A commercial shooting
preserve license issued under W. Va. Code §20-2-54 expires on
June 30 of the fiscal year of issue. All other";

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On page four, subsection 4.1, by striking out the word
"will";

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On page four, by striking out subdivision 4.1.1 m its
98 entirety;
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On page five, subsection 5.3, by striking out the word "as";

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On page five, subsection 6.2, by striking out "A captive
deer facility must be inspected by both Division of Natural
Resources, Wildlife Resources and Law Enforcement personnel
and an inspection form completed." and inserting in lieu thereof
the following: "Personnel from both the Division of Natural
Resources, Wildlife Resources Section and the Division of
Natural Resources, Law Enforcement Section will inspect
captive cervid facilities and complete an inspection form.";

On page eleven, subsection 7.4, by striking out the word
108
109 "will";
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On page eleven, subsection 7.4, by striking out the words
111 "or not the license" and inserting in lieu thereof the word "it";
On page eleven, subsection 7.4.1, by striking out "There
112
113 shall be a" and inserting in lieu thereof "The";
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On page eleven, subsection 7.4.1, by striking out "of' and �
115 inserting in lieu thereof "is";


On page eleven, subsection 7.4.1, by adding the following sentence at the end of the subdivision: “The fee for renewal of a captive cervid facility license is $250.”;

On page eleven, subdivision 7.4.2, by striking out the words “A public hearing will be conducted” and inserting in lieu thereof the words “The Division of Natural Resources will conduct a public hearing”;

On page eleven, by striking out subdivision 7.4.3 in its entirety and inserting in lieu thereof the following:

“7.4.3. “A unique and permanent identifying license number, corresponding to the number assigned to the premises by the National Animal Identification System, shall be issued to each licensed captive cervid facility. The applicant must supply this number to the West Virginia Division of Natural Resources with the application for a captive cervid facility license.”;

On page eleven, subdivision 7.4.5, by striking out the words “direct or”;

On pages eleven and twelve, by striking out all of subdivision 7.4.7 and by renumbering the remaining subdivisions;

On page twelve, subdivision 7.4.8, by striking out the words “posts must be spaced at 20 feet maximum for T post or 30 feet maximum for rigid post; brace posts must be buried at least 4 feet in rocky soil and 6 feet in sandy soil or concrete must be used to provide equal stability; line posts must be buried to 3 feet” and inserting in lieu thereof the words “posts must be properly spaced and anchored”;
On page twelve, subdivision 7.4.13, after the word “pests” by striking out the words “Food and water containers shall be kept clean. Hay, straw or other bedding material must be replaced as needed. All waste must be disposed of in a legal manner.” and inserting in lieu thereof “and is in accordance with best management practices”;

On page twelve, subdivision 7.4.14, by striking out the word “state” and inserting in lieu thereof the words “West Virginia”;

On page twelve, subdivision 7.4.14, by striking out the word “accredited” and inserting in lieu thereof the words “West Virginia licensed”;

On page twelve, at the end of subdivision 7.4.14, after the words “brucellosis testing.” by inserting the following: “The collection of samples for CWD testing shall be performed by trained personnel within the West Virginia Division of Natural Resources or by a trained veterinarian employed by the West Virginia Department of Agriculture. For the purpose of collecting tissue for CWD testing, the captive cervid facility licensee has four options: (1) the licensee may deliver to a West Virginia Division of Natural Resources District Office the head of the cervid; (2) the licensee may deliver to a West Virginia Division of Natural Resources District Office the entire cervid with the head intact; (3) the licensee may contact the West Virginia Division of Natural Resources and a trained representative of the West Virginia Division of Natural Resources and/or a trained veterinarian employed by the West Virginia Department of Agriculture shall go to the facility and obtain the tissue samples; or (4) the licensee may deliver the entire cervid with the head intact to the West Virginia Department of Agriculture lab in Moorefield, West Virginia, and upon delivery of the cervid carcass, the West Virginia Department of Agriculture shall notify the West Virginia Division of Natural Resources of the delivery. After the West Virginia Division of
Natural Resources and/or the West Virginia Department of Agriculture have obtained sufficient and necessary tissue samples, the remaining tissue may be shared with the captive cervid facility.

On page twelve, subdivision 7.4.15, by striking out “The co-mingling of different Cervid species or Cervid species and livestock will not be permitted in the same pens without written approval of the Director. If different Cervid species are housed at the same facility, they must be separated into different pens that are double-fenced or otherwise prohibit contact between the different species.” and inserting in lieu thereof the following: “Co-mingling of different cervid species will be allowed if the population density is at least 20,000 square feet per animal and if all best management practices are followed by the captive cervid facility.”;

On page twelve, subdivision 7.4.15, after the words “material from” by striking out “different Cervid species” and inserting in lieu thereof the words “captive cervids”;

On page twelve, subdivision 7.4.15, after the word “exposed” by striking out “to other Cervids in separate pens or”;

On page thirteen, subdivision 7.4.16, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page thirteen, subdivision 7.4.16, by striking out the words “such verification”;

On page thirteen, subdivision 7.4.18, after the words “50 yards” by striking out the words “Except that a” and inserting in lieu thereof the word “A”;

On page thirteen, subdivision 7.4.18, after the words “in the ear” by striking out the word “shall” and inserting in lieu thereof the word “is”;
209 On page thirteen, subdivision 7.4.19, by striking out the word “An” and inserting in lieu thereof the words “A licensee shall maintain an”;

212 On page thirteen, subdivision 7.4.19, by striking out the words “will be maintained”;

214 On page thirteen, subdivision 7.4.19, after the word “permits” by striking out the period and the words “Records shall show” and inserting in lieu thereof the words “and shall include”;

218 On page thirteen, subdivision 7.4.20, by striking out the word “A” and inserting in lieu thereof the words “A licensee shall forward a”;

221 On page thirteen, subdivision 7.4.20, by striking out the words “shall be forwarded”;

223 On page thirteen, subdivision 7.4.20, by striking out the words “Prior approval shall be obtained from the Director for the movement of captive cervids, and shall be conditional on negative test results and herd accreditation for TB and brucellosis as defined by the USDA.” and inserting in lieu thereof the following: “A licensee must obtain prior approval from the Director to move captive cervids. The Director may grant approval on a case-by-case basis. All captive cervid facilities must enroll the cervid herds in accreditation programs for brucellosis and TB as defined by the USDA: Provided, That captive cervid facilities licensed after August 9, 2005 may only accept cervids from TB accredited herds that also meet all requirement of CWD monitoring and surveillance programs”;

236 On page thirteen, subdivision 7.4.20, after the words “performed by” by striking out the words “an accredited” and inserting in lieu thereof the words “a West Virginia licensed”;
On page thirteen, by striking out subdivision 7.4.21 in its entirety and inserting in lieu thereof the following:

"7.4.20. A captive cervid facility licensed after August 9, 2005, may receive animals coming from a herd within the state only if the proposed transfer is from a herd that has an ongoing and appropriate CWD surveillance record for at least 60 months. If a licensee has a monitoring program which has been in effect for at least 36 months, the Director may, after reviewing the facility’s monitoring records, approve intra-state movement of cervids from the facility’s herd: Provided, That intra-state movement of captive cervids may be approved by the Director on a case-by-case basis.”;

On page thirteen, by striking out subdivision 7.4.22 in its entirety and inserting in lieu thereof the following:

"7.4.21. A captive cervid facility in this state may not receive animals that have originated from or been housed with animals originating from any state that has a confirmed CWD or tuberculosis (TB) positive cervid in the last 60 months. A captive cervid facility in this state may not receive genetic material that originates from any state that has a confirmed CWD or tuberculosis (TB) positive cervid in the last 60 months.”;

On page thirteen, subdivision 7.4.23, by striking out the words “an accredited” and inserting in lieu thereof the words “a West Virginia licensed”;

On page thirteen, at the end of subdivision 7.4.24, by changing the period to a colon and adding the following proviso: “Provided, That fawns below the age of six (6) months may be moved or transferred if the fawn originates from a certified tuberculous free herd and is tagged with a unique marker visible from 50 yards.”;
On page fourteen, subdivision 7.4.25, by striking out the word “Every” and inserting the word “A licensee will make every”;

On page fourteen, subdivision 7.4.25, by striking out the words “will be made”;

On page fourteen, subdivision 7.4.25, by striking out the word “All” and inserting in lieu thereof the words “A licensee shall report all known”;

On page fourteen, subdivision 7.4.25, by striking out the words “shall be reported”;

On page fourteen, subdivision 7.4.25, by striking out “24” and inserting in lieu thereof “8”;

On page fourteen, subdivision 7.4.25, after the word “Captain” by changing the period to a comma and inserting the following: “District WRS Game Biologist or the county conservation officer.”;

On page fourteen, subdivision 7.4.25, after the words “captive Cervid license” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “Any negligent act that results in captive cervids escaping is a violation of the license.”;

On page fourteen, subdivision 7.4.26, after the words “transmissible diseases.” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “All costs for killing an animal that escapes due to a negligent act, including collecting samples and testing, are the responsibility of the licensee.”;

On page fourteen, subdivision 7.4.27, by striking out “shall” and inserting in lieu thereof the word “may”;
On page fourteen, subdivision 7.4.28, by striking out the words “The” and inserting in lieu thereof the words “An authorized representative of the Director shall periodically inspect the”;

On page fourteen, subdivision 7.4.28, by striking out the words “shall be periodically inspected by an authorized representative of the Director”;

On page fourteen, subdivision 7.4.30, by striking out the word “Any” and inserting in lieu thereof the words “The licensee shall report any”;

On page fourteen, subdivision 7.4.30, by striking out the words “shall be reported”;

On page fourteen, subdivision 7.4.31, by striking out the word “Appropriate” and inserting in lieu thereof the words “The licensee shall submit appropriate”;

On page fourteen, subdivision 7.4.31, by striking out the word “must be submitted”;

On page fourteen, subdivision 7.4.31, by striking out the words “may also be required.” and inserting in lieu thereof the following: “is also required. Any captive cervid that is fourteen months of age or older that dies or is slaughtered must be tested for TB and brucellosis by a USDA certified, West Virginia licensed veterinarian if sufficient samples are available. These test results shall be made available to the West Virginia Department of Agriculture and the West Virginia Division of Natural Resources.”;

On page fourteen, subdivision 7.4.32, by striking out the words “It shall be the licensee’s responsibility to ensure that” and insert in lieu thereof “The licensee shall notify”;
On page fourteen, subdivision 7.4.32, by striking out the words “is notified”;

On page fourteen, subdivision 7.4.33, after the words “outside the infected captive Cervid facility.” by striking out the remainder of the subdivision.

And,

On page fourteen, after subdivision 7.4.33, by adding a new subdivision to read as follows:

“7.4.33. The West Virginia Department of Agriculture and the West Virginia Division of Natural Resources shall work together to develop accreditation programs for captive cervids for diseases including Tuberculosis (TB), brucellosis, and chronic wasting disease (CWD). Captive cervid facilities are required to enroll their herds in the USDA-APHIS CWD herd certification program, when the program becomes effective. In addition, a herd plan shall be developed that minimally includes actions described in the USDA-APHIS final rule, or if not available the proposed rule, that apply to the positive herd, epidemiologically linked herds, and the facility.”

(h) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article one, chapter twenty of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the thirteenth day of October, two thousand five, relating to the Division of Natural Resources (Falconry, 58 CSR 65), is authorized.

(i) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section seven, article two-b, chapter twenty of this code, relating to the Division of Natural Resources
(Lifetime hunting, trapping and fishing licenses, 58 CSR 67), is authorized.

§64-10-4. Division of Labor.

(a) The legislative rule filed in the State Register on the twenty-ninth day of July, two thousand five, authorized under the authority of section four, article nine, 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 first day of November, two thousand five, relating to the Division of Labor (West Virginia Manufactured Housing Construction and Safety Standards Board, 42 CSR 19), is authorized, with the following amendments:

On page thirteen, section ten-a, subsection two, subdivision (a), paragraph (iii), by striking the words “American National Standards Institute, A225.1 Installation Standard for Manufactured Homes” and inserting in lieu thereof the words “National Fire Protection Association 225 Model Manufactured Home Installation Standard”;

On page nineteen, section fifteen, by striking subsection 15.1 in its entirety;

On page twenty, section fifteen, by striking subsections 15.4 and 15.5 in their entirety;

On page twenty-one, section fifteen, by striking subsection 15.12 in its entirety; and

By renumbering the remaining subsections in section fifteen of the Legislative rule.

(b) The legislative rule filed in the State Register on the tenth day of February, two thousand five, authorized under the authority of section four, article five-f, 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 eighteenth day of January, two thousand six, relating to the Division of Labor (nurse overtime complaints, 42 CSR 30), is authorized.

§64-10-5. Division of Tourism.

The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand five, authorized under the authority of section nine, article two, chapter five-b of this code, modified by the Division of Tourism to meet the objections of the legislative rule-making review committee and refiled in the State Register on the eleventh day of January, two thousand six, relating to the Division of Tourism (Direct Advertising Grants Program, 144 CSR 1), is authorized, with the following amendments:

On page one, following section 144-1-1, by striking out all of section 144-1-2 and inserting in lieu thereof the following:

“§144-1-2. Definitions.

2.1 “Applicant” means a for profit or non-profit entity or organization located within the state that promotes tourism within the state and is also a destination. The term “applicant” may not include vendors that would be supplying services paid for out of grant funds, schools or camps.

2.2 “Application” means a written request for tourism promotion funds pursuant to this rule containing all forms, information and attachments executed by the applicant and all partners, if applicable.

2.3. “Amenity” includes spa services, golf courses, full-service restaurants, skiing or snow activities, tennis, horseback riding, hiking trails, boating or fishing.
"Attraction" means an entity which is at least one of the following:

2.4.1. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;

2.4.2. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries;

2.4.3. Scenic or natural areas such as show caves or caverns;

2.4.4. Theme or Amusement Parks;

2.4.5. Zoos, Aquariums or Wild Animal Parks;

2.4.6. Recreational Activities, including but not limited to whitewater rafting, skiing and snow activities, mountain biking, hunting and fishing.

2.5. "Code" means the Code of West Virginia.

2.6. "Commission" means the Tourism Commission created pursuant to §5B-2-8 of the Code.

2.7. "Destination" means one of the following:

2.7.1. A region or area located within the state containing three or more attractions;

2.7.2. An independent activity located within the state;

2.7.3. A cultural or historic site or event which includes, but is not limited to, fairs or festivals, heritage and historic sites and museums;
2.7.4. Entertainment establishments which include, but are not limited to, pari-mutuel gaming establishments, live performing art centers, sporting organizations or arenas, vineyards or wineries;

2.7.5. Scenic or natural sites such as show caves or caverns;

2.7.6. Theme or Amusement Parks; or

2.7.7. Zoos, Aquariums or Wild Animal Parks;

2.8. "Destination Inn -or Bed and Breakfast" means a lodging facility located within the state whose recognized reputation for service and amenities are the primary motivating factor for visitors to travel to the area where it is located.

2.9. "Division" means the Division of Tourism created pursuant to §5B-2-8 of the code.

2.10. "Fulfillment" means printed materials used to respond to an inquiry requesting additional information generated by direct advertising or printed materials provided to the division, a state park, the national park service or other government agency for direct advertising.

2.11. "Grant Period" means the twelve month period running from the beginning project date through the ending project date and any extensions granted by the commission pursuant to subdivision 8.4.3. of this rule.

2.12. "Independent Activity" means an entity or organization which attracts a minimum of eighty-five percent (85%) of its visitors from outside the local market and is at least one of the following:

2.12.1. An entity or organization which provides recreational activities including, but not limited to, whitewater
rafting, skiing and snow activities, mountain biking, hunting
and fishing, bus tours, dinner cruises and sightseeing tours;

2.12.2. A Resort;

2.12.3. A Destination Inn or Bed and Breakfast;

2.12.4. An entity or organization offering vacation rentals;
or

2.12.5. Destination shopping.

2.13. “Local Market” means the geographic area within
fifty (50) miles of a destination.

2.14. “Partner” means an entity or organization located
within the state making a financial contribution toward the
applicant’s match requirement for an application for grant funds
for a collaborative marketing program with a central advertising
message directing tourists to a destination being represented by
the applicant. The term “partner” may not include vendors that
would be supplying services paid for out of grant funds.

2.15. “Resort” means a full-service lodging facility that is
frequented for relaxation or recreational purposes and offers at
least two amenities.

2.16. “Return on Investment” means the measure of a
project’s ability to use grant funds to generate additional value,
including, but not limited to additional bookings and reserva-
tions.

2.17. “Total project cost” means the total of all proposed
eligible expenditures contained within an application.

2.18. “Vacation Rental” means a lodging facility including
chalets, cabins or condominiums. The term “vacation rental”
may not include hotels or motels.”;
On page two, subsection 3.2, following the word “destination” by striking “/attraction”;

On page two, subsection 3.7, following the word “destination” by striking the words “or attraction”;

On page four, subdivision 4.3.4., following the word “funding” and the period, by adding the following:

“Applications for projects that include repeat marketing efforts shall contain information demonstrating that such repeat marketing efforts are in addition to regular ongoing advertising activities.”;

On page four, following subdivision 4.3.9. by adding the following:

“4.3.10. The project supports advertising activities that are over and above regular ongoing advertising activities.”;

On page four, following section 144-1-5, by striking out all of section 144-1-6 and inserting in lieu thereof the following:

“§144-1-6. Eligible and ineligible expenditures of grant funds.

6.1. Grant funds may only be used to pay for eligible expenditures for direct advertising. Eligible expenses for direct advertising include, but are not limited to the following:

6.1.1. The costs of advertising on television, radio, or other telecommunications media, in newspapers, magazines or other print media, direct mail advertising, and outdoor advertising or any combination thereof;

6.1.2. The costs of purchasing and using mailing lists for direct mail promotions;

6.1.3. The costs for United States postage used for direct mail and fulfillment for direct advertising: Provided, That if
bulk mail is appropriate, the applicant must use bulk mail and
reimbursement will be limited to the bulk mail rate; and if bulk
mail is not appropriate, reimbursement will be limited to the
cost of United States mail first class postage;

6.1.4. The costs of printing travel related literature:
Provided, That sixty percent (60%) of such literature is used as
fulfillment for direct advertising within the approved applica-
tion or approved request for modification of an approved
application; or

6.1.5. Registration fees for consumer and trade shows:
Provided, That the participation in such shows is for the
purpose of attracting visitors to the state.

6.2. Eighty percent (80%) of a project’s direct advertising
must be directed toward areas outside of the local market or in
major out-of-state markets, except for direct advertising for a
fair or festival grant authorized by subsection 7.3 of this rule.

6.3. Notwithstanding the provisions of subsection 6.2 of
this rule, all direct advertising in the form of billboards must be
directed toward areas outside of the local market or in major
out-of-state markets, except billboards for a fair or festival
grant authorized by subsection 7.3 of this rule.

6.4. All direct advertising in the form of billboards must have
a creative concept or layout approved by the Division in order for
any of its cost to be considered an eligible expenditure.

6.5. Any direct advertising related to real estate must be for
vacation rentals only. Any portion of direct advertising relating
to the sale of real estate must be pro-rated. A creative concept
must be submitted with any application or request for modifica-
tion of an approved application for direct advertising relating to
real estate. Advertisements for the sale of real estate in visitor
guides and brochures must be grouped on a specific page or
43 pages and those pages pro-rated from the grant at the time of
44 the submission of the application. (Example: CVB X has a 32
45 page visitor guide and has determined that area realtors will
46 take up 2 pages - CVB X must disclose this in its grant
47 application and media breakout and the totals must request
48 funding for only 30 pages.) No direct advertising for real estate
49 sales or realty agencies are permitted within cooperative
50 advertising, unless such ads are specifically and clearly
delineated as vacation rentals only.

52 6.6. Direct advertising may be in the form of cooperative
53 advertising which is advertising that represents a community,
54 region, county, multi-county or statewide organization and may
55 include tourism businesses or organizations that enhance the
56 destination for which the grant is to cover. Cooperative
57 advertising must be entirely directed toward areas outside the
58 local market or in major out-of-state markets. All cooperative
59 advertising must have a creative concept approved by the
60 Division in order for any of its cost to be considered an eligible
61 expenditure.

62 6.7. Eligible expenses may include production expenses for
direct advertising in the media categories provided in this
subsection. The total cost of such production expenses may not
exceed fifteen (15%) of the total cost of the direct advertising
and in no event may the total cost of such production expenses
exceed $22,500, for any one of the following media categories:

68 6.7.1. Printed material, including the printing of direct mail
69 and travel related literature;

70 6.7.2. Print media;

71 6.7.3. Television and radio; and

72 6.7.4. Billboards.
6.8. Grant funds may not be used to pay for ineligible expenditures. Ineligible expenditures include, but are not limited to the following:

6.8.1. Regular and ordinary business costs of the applicant including, but not limited to, supplies, personnel, phone, normal postage, distribution and shipping expenses or travel costs;

6.8.2. Any costs associated with preparation of the direct advertising grant application;

6.8.3. Costs for the rental or purchase of real estate;

6.8.4. Construction costs;

6.8.5. Costs of political or lobbying activities of any kind;

6.8.6. Membership fees or dues to any organization, or solicitation of membership to any organization through advertising within a grant program authorized by this rule;

6.8.7. Costs associated with the start up of any business or publication even if the business or publication may be totally or partially devoted to the promotion of tourism in the state;

6.8.8. The cost of purchase of audio/visual equipment;

6.8.9. Costs of alcoholic beverages;

6.8.10. Costs for any expenditure not identified in the application, unless the Commission grants prior approval in writing;

6.8.11. Costs of any public relations or research expense;

6.8.12. Costs for key rings, bumper stickers, mugs or any other similar promotional item;
6.8.13. Event production expenses, including costs for audio equipment, awards, entertainment, portable restrooms, labor or refreshments;

6.8.14. Costs relating to fund-raising activities;

6.8.15. Costs associated with retail advertising, except for destination shopping which is able to produce verification that said destination attracts a minimum of eighty-five (85%) of its visitors from outside the local market: Provided, That no retail advertising may include price point advertising;

6.8.16. Costs of Tourist Oriented Directional Signs (TODS) and logo signs for gas, food, lodging and camping;

6.8.17. Costs of sponsorships; or


On page six, in the fourth line of section 7.2, following the word “exceed” by striking “2,500” and inserting in lieu thereof “7,500”;

On page six, in the fourth line of section 7.2, following the word “applicant” by striking “in any given quarter as defined from time to time by the Division” and inserting in lieu thereof “and no applicant shall receive more than two grants per fiscal year”;

On page six, in the seventh line of section 7.2, following the words “minimum of” by striking “50” and inserting in lieu thereof “25”;

On page six, in the ninth line of section 7.2, following the word “exceed” by striking “750,000” and inserting in lieu thereof “2,000,000”;
“No applicant who has received a grant larger than $7,500 in any fiscal year may apply for a small grant under this section during the same fiscal year: Provided, That a nonprofit entity may apply for and receive small grants even if it has received large grants in the same fiscal year.”

**CHAPTER 146**

(H. B. 4698 — By Mr. Speaker, Mr. Kiss, and Delegates Amores, Craig, Michael, Pino, Stemple, Overington, Azinger and Hartman)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §38-2-9 of the Code of West Virginia, 1931, as amended, relating to changing the filing time for a subcontractor’s lien to one hundred days rather than seventy-five days to be consistent with the filing time for a mechanic’s lien.

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

That §38-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. MECHANICS’ LIENS.**


For the purpose of perfecting and preserving his or her lien, every subcontractor mentioned in section two of this article shall, within one hundred days after the completion of his or her subcontract, give to the owner or his or her authorized agent, by any of the methods provided by law for the service of a legal
notice or summons, a notice of lien, which notice shall be
sufficient if in form and effect as follows:

Notice of Mechanic’s Lien.

To.....................

You will please take notice that the undersigned ................
was and is subcontractor with ................ who was and is
general contractor for the furnishing of materials and doing of
the work and labor, necessary to the completion of (here
describe the nature of the subcontract) on that certain building
(or other structure or improvement as the case may be), owned
by you and situate on lot number ...... of block number ...... as
shown on the official map of ............ (or other definite and
ascertainable description of the real estate) and that the contract
price and value of said work and materials is $...... You are
further notified that the undersigned has not been paid therefor
(or has been paid only $...... thereof) and that he or she claims
and will claim a lien upon your interest in the said lot (or tract)
of land and upon the buildings, structures and improvements
thereon to secure the payment of the said sum.

................................

State of West Virginia,

County of ...................., being first duly sworn, upon his or
her oath says that the statements in the foregoing notice of
mechanic’s lien are true, as he or she verily believes.

Taken, subscribed and sworn to before me this .......... day
of ...................., 20....

My commission expires .............

................................

(Official Capacity)
But the lien shall be discharged and avoided, unless, within one hundred days after the completion of his or her subcontract as aforesaid, the subcontractor shall cause to be recorded in the office of the clerk of the county commission of the county wherein the property is situate, a notice of the lien, which notice shall be sufficient if in form and effect as that provided in section eight of this article.

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CHAPTER 147

(S. B. 627 — By Senators Helmick and Minard)

[Passed March 6, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 14, 2006.]

AN ACT to amend and reenact §38-10C-2 of the Code of West Virginia, 1931, as amended, relating to tax liens; allowing facsimile signatures while eliminating the requirement for notarization of notices of tax liens and releases of tax liens when facsimile signatures are used; and making technical changes to the requirements of recordation and release of tax liens.

Be it enacted by the Legislature of West Virginia:

That §38-10C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10C. STATE AND LOCAL TAX LIENS.

§38-10C-2. Notices of liens of state, political subdivisions and municipalities to be filed; indexes; release.

It is the duty of the Tax Commissioner, or the proper officers of the political subdivisions of the state for its subdivi-
sions and of the proper officers of the municipalities for the
municipalities, having liens, to file a notice thereof in the office
of the clerk of the county commission of the county in which
the property of the taxpayer against whom the lien is claimed,
is situate, stating in the notice what amount of money is owing
to the State of West Virginia, the political subdivision thereof
or the municipality therein, on account of the lien from the
taxpayer owing the same; and the clerk of the county commis-
sion of the county shall, upon the filing of notice, index the
same in the judgment or tax lien docket in his or her office as
a tax lien against the taxpayer in favor of the State of West
Virginia, the political subdivision thereof or the municipality
therein. Upon the satisfaction of the lien, a release thereof for
recording shall be signed and delivered to the taxpayer by the
proper officer. The signature of the Tax Commissioner or the
Tax Commissioner’s designee on the notice and on the release
may be either a properly acknowledged manual signature, or a
facsimile signature authenticated pursuant to the filing of an
affidavit and a manual signature with the Secretary of State in
the manners specified in section two, article fourteen, chapter six
of this code. The facsimile signature shall have the same legal
effect as the manual signature.

All acts or parts of acts inconsistent or in conflict herewith
are hereby repealed.

CHAPTER 148

(S. B. 673 — By Senators Oliverio, Prezioso,
Minear, Hunter and Sprouse)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all relating generally to the Local Powers Act; giving counties plenary power and authority to impose, administer, collect and enforce payment of voter-approved service fees to pay for or finance cost of special infrastructure projects within their counties; defining certain terms; giving county commissions authority to issue revenue bonds to finance special infrastructure projects; and including authority to issue refunding bonds and to take other actions to finance and complete such projects as the county commission deems prudent or necessary.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto fourteen new sections, designated §7-20-11, §7-20-12, §7-20-13, §7-20-14, §7-20-15, §7-20-16, §7-20-17, §7-20-18, §7-20-19, §7-20-20, §7-20-21, §7-20-22, §7-20-23 and §7-20-24, all to read as follows:

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-11. Additional powers.
§7-20-12. Countywide service fees.
§7-20-14. Use of proceeds from sale of bonds.
§7-20-15. No contribution by county.
§7-20-16. Bonds made legal investments.
§7-20-17. Construction of article.
§7-20-18. No notice, consent or publication required.
§7-20-19. Public officials exempt from personal liability.
§7-20-20. Cooperation by public bodies.
§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.
§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.
§7-20-11. Additional powers.

(a) In addition to any other powers which a county may now have and not withstanding the provisions of section six of this article, each county, by and through its county commission, shall have the following powers:

(1) To acquire, whether by purchase, construction, gift, lease or otherwise, one or more infrastructure projects, or additions thereto, which shall be located within the county;

(2) To lease, lease with an option to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to others any infrastructure projects for such rentals or amounts and upon such terms and conditions as the county commission may deem advisable;

(3) To establish a special infrastructure fund as a separate fund into which all special service fees and other revenues designated by the county commission shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if special infrastructure revenue bonds are issued by the county commission; and

(4) To impose a countywide service fee to pay the costs of one or more infrastructure projects, including, but not limited to, the payment of debt service on any revenue bonds issued under section thirteen of this article.

(b) For purposes of this section and its implementation and use:
(1) “Capital improvements” means the following public facilities or assets that are owned, supported or established by a county commission:

(A) Water treatment and distribution facilities;

(B) Wastewater treatment and disposal facilities;

(C) Sanitary sewers;

(D) Storm water, drainage and flood control facilities; and

(E) Public road systems, including, but not limited to, rights-of-way, lighting, sidewalks and gutters.

“Capital improvements” as defined herein is limited to those improvements that are treated as capitalized expenses according to generally accepted governmental accounting principles and that have an expected useful life of no less than three years. “Capital improvement” does not include costs associated with the operation, repair, maintenance or full replacement of capital improvements. “Capital improvement” does include reasonable costs for planning, design, engineering, land acquisition and other costs directly associated with the capital improvements described herein, whether incurred prior to or subsequent to imposition of a countywide service fee. This includes costs incurred by a developer prior to imposition of the countywide service fee that would have been incurred by the county commission as part of the cost of capital improvement, provided such costs were not incurred more than thirty-six months before the county commission adopts the order imposing the countywide service fee, or such shorter period, as determined to be reasonable in the sole discretion of the county commission.

(2) “Plan” means the plan for special infrastructure projects that includes one or more capital improvements, as defined in
this section that is adopted by a county commission in conformity with the requirements of this article.

(c) Before commencing certain infrastructure projects, the county commission shall obtain written confirmations from an affected public utility or the West Virginia Department of Transportation or other agency, as provided in this section:

(1) If the project includes water, wastewater or sewer improvements, the county commission shall obtain from the utility or utilities that provide service in the area or areas where the improvements will be made that the utility or utilities:

(A) Currently has adequate capacity to provide service without significant upgrades or modifications to its treatment, storage or source of supply facilities;

(B) Will review and approve all plans and specifications for the improvements to determine that the improvements conform to the utility’s reasonable requirements and, if the improvement consists of water transmission or distribution facilities, that the improvements provide for adequate fire protection for the district; and

(C) If built in conformance with said plans and specifications, will accept the improvements following their completion, unless the project will continue to be owned by the county commission.

(2) If the special infrastructure project includes improvements other than as set forth in subdivision (1), subsection (b) of this section that will be transferred to the West Virginia Department of Transportation or other governmental agency, written evidence that the department or agency will accept the transfer if the infrastructure project is built in conformance with requirements of the Department of Transportation, or other agency, pursuant to plans and specifications approved by the department or other agency.
§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least thirty days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary, general or a special election held in the county.

(4) The order of the county commission shall provide for the administration, collection and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms “employed”, “employee”, “employer” and “self-employed” have the following meaning:

(A) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment
or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long as such individual has not permanently discontinued employment within the county.

(B) "Employee" means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages or other compensation.

(C) "Employer" means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) "Self employed individual" means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business or enterprise of any kind within the county’s geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued
pursuant to section thirteen of this article and any costs related
to the administration, collection and enforcement of the service
fee.

(b) Any order entered by a county commission imposing a
countywide service fee pursuant to this part, or increasing or
decreasing a countywide service fee previously adopted
pursuant to this part, shall be 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
the publication shall be the county. The order shall not become
effective until it is ratified by a majority of the lawful votes cast
thereon by the qualified voters of the county at a primary,
general or special election, as the county commission shall
direct. Voting thereon shall not take place until after notice of
the referendum shall have been given by publication as above
provided for the publication of the order after it is adopted by
the county commission. The notice of referendum shall at a
minimum include: (1) The date of the referendum; (2) the
amount of countywide service fee; (3) a general description of
the capital improvement or improvements included in the
special infrastructure project to be financed with the service fee;
(4) whether revenue bonds will be issued; and (5) if bonds are
to be issued, the estimated term of the revenue bonds. The
county commission may include additional information in the
notice of referendum.


(a) The county commission, in its discretion, may use the
moneys in such special infrastructure fund to finance the costs
of the special infrastructure projects on a cash basis. The county
commission periodically may issue special infrastructure
revenue bonds of the county as provided in this section to
finance all or part of such special infrastructure projects and
pledge all or any part of the moneys in such special infrastruc-
ture fund for the payment of the principal of and interest on
such special infrastructure revenue bonds and for reserves
therefor. Any pledge of the special infrastructure fund for
special infrastructure revenue bonds shall be a prior and
superior charge on the special infrastructure fund over the use
of any of the moneys in the fund to pay for the cost of any of
such purposes on a cash basis.

(b) Such special infrastructure revenue bonds periodically
may be authorized and issued by the county commission to
finance, in whole or in part, the special infrastructure projects
in an aggregate principal amount not exceeding the amount
which the county commission determines can be paid as to both
principal and interest and reasonable margins for a reserve
therefrom from the moneys in such special infrastructure fund.

(c) The issuance of special infrastructure revenue bonds
shall be authorized by an order of the county commission and
such special infrastructure revenue bonds shall bear such date
or dates; mature at such time or times not exceeding forty years
from their respective dates; be in such denomination; be in
registered form, with such exchangeability and
interchangeability privileges; be payable in such medium of
payment and at such place or places, within or without the state;
be subject to such terms of prior redemption at such prices; and
shall have such other terms and provisions as determined by the
county commission. Such special infrastructure revenue bonds
shall be signed by the president of the county commission under
the seal of the county commission, attested by the clerk of the
county commission. Special infrastructure revenue bonds shall
be sold in such manner as the county commission determines is
for the best interests of the county.

(d) The county commission may enter into trust agreements
with banks or trust companies, within or without the state, and
in such trust agreements or the resolutions authorizing the
issuance of such bonds may enter into valid and legally binding
covenants with the holders of such special infrastructure revenue bonds as to the custody, safeguarding and disposition of the proceeds of such special infrastructure revenue bonds, the moneys in such special infrastructure fund, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of special infrastructure revenue bonds by the county commission under the provisions of this section; as to the maintenance or revision of the amounts of such fees; as to the extent to which swap agreements, as defined in section two-h, article two-g, chapter thirteen of this code, shall be used in connection with such special infrastructure revenue bonds, including such provisions as payment, term, security, default and remedy provisions as the county commission shall consider necessary or desirable, if any, under which such fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the county commission in the best interests of the county and to enhance the marketability of such special infrastructure revenue bonds.

(e) After the issuance of any of the special infrastructure revenue bonds, the service fee pledged to the payment thereof may not be reduced as long as any of the special infrastructure revenue bonds are outstanding and unpaid except under such terms, provisions and conditions as shall be contained in the order, trust agreement or other proceedings under which the special infrastructure revenue bonds were issued.

(f) The special infrastructure revenue bonds shall be and constitute negotiable instruments under the Uniform Commercial Code of this state; shall, together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality or political subdivision thereof; and the special infrastructure revenue bonds may not be considered to be obligations or debts of the state or of the county issuing the bonds and the credit or taxing power of the
state or of the county issuing the bonds may not be pledged therefor, but the special infrastructure revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(g) A holder of the special infrastructure revenue bonds shall have a lien against the special infrastructure fund for payment of the special infrastructure revenue bond and the interest thereon and may bring suit to enforce the lien.

(h) A county commission may issue and secure additional bonds payable out of the special infrastructure fund which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission and payable from the special infrastructure fund.

(i) For purposes of this article:

(1) “Special infrastructure revenue 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 county commission, the proceeds of which are used directly or indirectly to finance or refinance special infrastructure projects within the county and financing costs and that are secured by or payable from the special service fees;

(2) “Special infrastructure project” means “capital improvements” as that term is defined in section eleven of this article; and

(3) “Special infrastructure fund” means that fund established and held by the sheriff of the county or a trustee for bondholders, as the case may be, into which the special fees imposed pursuant to section twelve of this article are deposited.

§7-20-14. Use of proceeds from sale of bonds.
(a) The proceeds from the sale of any bonds issued under authority of this article shall be applied only for the purpose for which the bonds were issued: Provided, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds shall not be needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds shall be applied to the purchase of bonds for cancellation or payment of the principal of or the interest on the bonds, or held in reserve for the payment thereof.

(b) The costs of acquiring any special infrastructure project shall be deemed to include the following:

(1) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, the acquisition of equipment and site clearing, grading and preparation;

(2) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(3) Real property acquisition costs;

(4) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(5) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees in connection with the implementation of a project;
(6) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(7) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the implementation of project plans;

(8) Payments made, in the discretion of the county commission, which are found to be necessary or convenient to the implementation of project plans; and

(9) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

§7-20-15. No contribution by county.

(a) No county commission shall have the power to pay out of its general funds, or otherwise contribute, any of the costs of acquiring, constructing or financing a special infrastructure project to be acquired, constructed or financed, in whole or in part, out of the proceeds from the sale of revenue bonds issued under the authority of this article: Provided, That this provision shall not be construed to prevent a county from accepting donations of property to be used as a part of an infrastructure project or to be used for defraying any part of the cost of any infrastructure project or from imposing a service fee as provided in section twelve of this article, which is dedicated, in whole or in part, to the infrastructure project or to payment of debt service on revenue bonds issued pursuant to this article.
(b) The bonds issued pursuant to this article shall be payable solely from: (1) The revenue derived from the infrastructure project or the financing thereof; (2) the service fee imposed pursuant to section twelve of this article; or (3) any combination of these sources.

(c) No county commission shall have the authority under this article to levy any taxes for the purpose of paying any part of the cost of acquiring, constructing or financing an infrastructure project. However, all necessary preliminary expenses actually incurred by a county commission in the making of surveys, taking options, preliminary planning and all other expenses necessary to be paid prior to the issuance, sale and delivery of the revenue bonds, may be paid by the county commission out of any surplus contained in any item of budgetary appropriation or any revenues, including, but not limited to, service fees, collected in excess of anticipated revenues, which shall be reimbursed and repaid out of the proceeds of the sale of the revenue bonds.

§7-20-16. Bonds made legal investments.

Bonds issued under the provisions of this article shall be legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state and for a business development corporation organized pursuant to chapter thirty-one, article fourteen of this code.

§7-20-17. Construction of article.

Neither this article nor anything herein contained shall be construed as a restriction or limitation upon any powers which a county might otherwise have under any laws of this state, but shall be construed as alternative or additional; and this article shall not be construed as requiring an election on issuance of the bonds by the voters of a county prior to the issuance of bonds hereunder by the county commission and same shall not
§7-20-18. No notice, consent or publication required.

No notice to or consent or approval by any other governmental body or public officer shall be required as a prerequisite to the issuance or sale of any bonds or the making of any agreement, a mortgage or deed of trust under the authority of this article. No publication or notice shall be necessary to the validity of any resolution or proceeding had under this article, except where publication or notice is expressly required by this article.

§7-20-19. Public officials exempt from personal liability.

No member of a county commission or other county officer shall be personally liable on any contract or obligation executed pursuant to the authority contained in this article. Nor shall the issuance of bonds under this article be considered as misfeasance in office.

§7-20-20. Cooperation by public bodies.

For the purpose of aiding and cooperating in the planning, undertaking or carrying out of a special infrastructure project located, in whole or in part, within the area in which it is authorized to act, any public body may, upon such terms, with or without consideration, as it may determine:

1. Dedicate, sell, convey or lease any of its interest in any property, or grant easements, licenses or any other rights or privileges therein to an authority;

2. Cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake, to be furnished in connection with an infrastructure project;
(3) Furnish, dedicate, close, vacate, pave, install, grade, regrade, plan or replan streets, roads, sidewalks, ways or other places, which it is otherwise empowered to undertake;

(4) Plan or replan, zone or rezone any parcel of land within the jurisdiction of the public body or make exceptions from building regulations and ordinances if such functions are of the character which the public body is otherwise empowered to perform;

(5) Cause administrative and other services to be furnished for the special infrastructure project of the character which the public body is otherwise empowered to undertake or furnish for the same or other purposes;

(6) Incur the entire expense of any public improvements made by the public body in exercising the powers granted in this section;

(7) Do any and all things necessary or convenient to aid and cooperate in the planning or carrying out of a special infrastructure project that is, in whole or in part, located in its jurisdiction;

(8) Lend, grant or contribute funds to a county commission for purposes of a special infrastructure project; and

(9) Employ any funds belonging to or within the control of the public body, including funds derived from the sale or furnishing of property, service, or facilities to a county commission for a special infrastructure project, in the purchase of the bonds or other obligations of a county commission issued under this article and, as the holder of such bonds or other obligations, exercise the rights connected therewith.

§7-20-21. Relocation of public utility lines or facilities to accommodate special infrastructure project.
(a) In the event a county commission determines that any public utility line or facility located upon, across or under any portion of a street, avenue, highway, road or other public place or way shall be temporarily or permanently readjusted, removed, relocated, changed in grade or otherwise altered (each and all hereinafter for convenience referred to as “relocation”) in order to accommodate any infrastructure project undertaken pursuant to the provisions of this article, the cost of the relocation shall be borne by the county commission.

(b) For purposes of this section, the term “cost of relocation” shall include the entire amount paid by such utility, exclusive of any right-of-way costs incurred by such utility, properly attributable to such relocation after deducting therefrom any increase in the value of the new line or facility and salvage derived from the old line or facility.

(c) The cost of relocating utility lines or facilities, as defined herein, in connection with any special infrastructure project is hereby declared to be a cost of the project.

§7-20-22. Special infrastructure projects financed by service fee considered to be public improvements subject to prevailing wage, local labor preference and competitive bid requirements.

(a) Any special infrastructure project acquired, constructed or financed, in whole or in part, by service fees imposed by a county commission under section twelve of this article shall be considered to be a “public improvement” within the meaning of the provisions of articles one-c and five-a, chapter twenty-one of this code.

(b) The county commission shall, except as provided in subsection (c) of this section, solicit or require solicitation of competitive bids and require the payment of prevailing wage rates as provided in article five-a, chapter twenty-one of this code.
code and compliance with article one-c of said chapter for any
special infrastructure project funded pursuant to section twelve
of this article exceeding twenty-five thousand dollars in total
cost.

(c) Following the solicitation of the bids, the construction
contract shall be awarded to the lowest qualified responsible
bidder, who shall furnish a sufficient performance and payment
bond: Provided, That the county commission or other person
soliciting the bids may reject all bids and solicit new bids on the
project.

(d) 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.

(e) This section does not:

(1) Apply to work performed on construction projects not
exceeding a total cost of fifty thousand dollars by regular
full-time employees of the county commission: Provided, That
no more than fifty thousand dollars shall be expended on an
individual project in a single location in a twelve-month period;

(2) Prevent students enrolled in vocational educational
schools from being used in construction or repair projects when
such use is a part of the students’ training program;

(3) Apply to emergency repairs to building components and
systems: Provided, That the term “emergency repairs” means
repairs that, if not made immediately, will seriously impair the
use of the building components and systems or cause danger to
those persons using the building components and systems; or
(4) Apply to any situation where the county commission comes to an agreement with volunteers, or a volunteer group, by which the county commission will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the county commission: Provided, That the total cost of the construction or repair projects does not exceed fifty thousand dollars.

§7-20-23. Excess funds; termination of service fee.

(a) When revenue bonds have been issued as provided in this article and the amount of service fees imposed pursuant to section twelve of this article and collected by the sheriff, less costs of administration, collection and enforcement, exceeds the amount needed to pay project costs and annual debt service, including the finding of required debt service and maintenance reserves, the additional amount shall be set aside in a separate fund and used to retire some or all of the outstanding revenue bonds before their maturity date.

(b) Once the revenue bonds issued as provided in this article are no longer outstanding or the county commission determines that sufficient reserves have been or will be accumulated as of a specified date to pay all future debt service on the outstanding bonds, the service fee to payable services on a subsequent issue of revenue bonds imposed pursuant to section twelve of this article may not be imposed or collected for subsequent weeks after that date. Termination of the service fee as provided in this section shall not bar or otherwise prevent the county commission from collecting service fees that accrued before the termination date.


If any section, clause, provision or portion of this article shall be held to be invalid or unconstitutional by any court of
3 competent jurisdiction, such holding shall not affect any other
4 section, clause or provision of this article which is not in and of
5 itself unconstitutional.

CHAPTER 149

(Com. Sub. for S. B. 47 — By Senators Prezioso, White and Foster)

[Passed March 9, 2006; in effect September 1, 2006.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §8A-11-1 of the Code of West
Virginia, 1931, as amended, relating to factory-built homes; updating
compliance documentation for evidence in a court case; clarifying
regulation by local governments; and requiring construction and
installation to comply with federal regulations and applicable law.

Be it enacted by the Legislature of West Virginia:

That §8A-11-1 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 11. SPECIAL PROVISIONS.


(a) Notwithstanding any existing provisions of law,
municipal or county ordinance or state building code, the
standards for factory-built homes, housing prototypes, subsys-
tems, materials and components certified as acceptable by the
federal Department of Housing and Urban Development are
considered acceptable and are approved for use in housing
construction in this state.
8  (b) Appropriate building code compliance documentation 
9  attached to a factory-built home shall constitute prima facie 
10  evidence that the products or materials contained therein are 
11  acceptable.

12  (c) A governing body of a municipality or a county, when 
13  enacting residential design standards for the purposes of 
14  regulating the subdivision, development and use of land, shall 
15  uniformly apply such design standards and associated review 
16  and permitting procedures for factory-built and other single- 
17  family constructed homes.

18  (d) Factory-built homes, like other types of homes, shall be 
19  constructed and installed in conformity with the requirements 
20  of 44 C. F. R. §60.3(1976) and any applicable statute or rule 
21  relating to building in a flood zone.

CHAPTER 150
(S. B. 539 — By Senators Kessler, Dempsey, Fanning, 
Foster, Hunter, Jenkins, Minard, Oliverio, White, 
Barnes, Deem, Harrison and Lanham)

[Passed February 13, 2006; in effect from passage] 
[Approved by the Governor on February 21, 2006.]

AN ACT to amend and reenact §22A-1-3 of the Code of West 
Virginia, 1931, as amended, relating to increasing the profes- 
sional qualifications required for the position of Director of the 
office of Miners’ Health, Safety and Training.

Be it enacted by the Legislature of West Virginia:
That §22A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.


(a) The Director of the Office of Miners’ Health, Safety and Training is responsible for surface and underground safety inspections of coal mines and the administration of the office of Miners’ Health, Safety and Training.

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The director shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor.

(d) The Director of the Office of Miners’ Health, Safety and Training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years’ education, training or experience in underground coal mining safety and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her

*CLERK’S NOTE: This section was also amended by H. B. 4596 (Chapter 151), which passed subsequent to this act.
administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars. The executed oath and bond shall be filed in the office of the Secretary of State. Premiums on the bond shall be paid from office funds.

CHAPTER 151

(Com. Sub. for H. B. 4596 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 10, 2006; in effect ninety days from passage.] [Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §22A-1-3 of the Code of West Virginia, 1931, as amended, relating to the director of the Office
of Miners' Health, Safety and Training; providing the Secretary of the Department of Commerce as interim director; revising qualifications for the director; providing for appointment of an acting director; and establishing minimum qualifications for the acting director.

Be it enacted by the Legislature of West Virginia:

That §22A-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

*§22A-1-3. Director of the Office of Miners' Health, Safety and Training.*

(a) The Director of the Office of Miners' Health, Safety and Training is responsible for surface and underground safety inspections of coal mines and the administration of the Office of Miners' Health, Safety and Training.

(b) The director is the chief executive officer of the office. Subject to provisions of law, he or she shall organize the office into those offices, sections, agencies and other units of activity found by the director to be desirable for the orderly, efficient and economical administration of the office. The director may appoint any other employees needed for the operation of the office and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The director shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor.

*Clerk's Note:* This section was also amended by S. B. 539 (Chapter 150), which passed prior to this act.
(d) The Director of the Office of Miners’ Health, Safety and Training shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years’ education or training in underground mining safety, and three years’ experience in underground mining and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. Special reference shall be given to his or her administrative experience and ability. The director shall devote all of his or her time to the duties of the position of director and shall not be directly interested financially in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority owner of, or have control of or a controlling interest in, a mine in this or any other state. The director shall not be a candidate for or hold any other public office, shall not be a member of any political party committee and shall immediately forfeit and vacate his or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee: Provided, That, in the event of a vacancy in the position of director, the Governor may fill the director’s position on an interim basis by appointing an acting director to exercise the powers of the director. The acting director shall be a citizen of West Virginia, shall be a competent person of good repute and temperate habits with a demonstrated interest and five years’ education, training or experience in underground coal mining safety and shall have at least three years of experience in a position of responsibility in at least one discipline relating to the duties and responsibilities for which the acting director will be responsible during his or her interim service in the office of director. The interim service appointment can not last for more than one year, after which a permanent director must be appointed.

(e) The director shall be allowed and paid necessary expenses incident to the performance of his or her official
duties. Prior to the assumption of his or her official duties, the director shall take the oath required of public officials prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars. The executed oath and bond shall be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from office funds.

CHAPTER 152

(Com. Sub. for S. B. 439 — By Senators McKenzie and Bowman)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §24C-1-3 and §24C-1-5 of the Code of West Virginia, 1931, as amended, all relating to duties of operators of an underground facility; strengthening the one-call system requirements for persons excavating or performing demolition work in the vicinity of underground facilities by increasing the number of emergency response agencies to be notified in the event of resulting damage; defining emergencies; and providing criminal penalties for violating certain duties and responsibilities imposed in said article.

Be it enacted by the Legislature of West Virginia:

That §24C-1-3 and §24C-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. ONE-CALL SYSTEM.
§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

§24C-1-5. Duties and responsibilities of excavators; failure of excavator to comply; civil penalties.

§24C-1-3. Duties and responsibilities of operators of underground facilities; failure of operator to comply.

(a) Each operator of an underground facility in this state, except any privately owned public water utility regulated by the Public Service Commission, any state agency, any municipality or county, or any municipal or county agency, shall be a member of a one-call system for the area in which the underground facility is located. Privately owned public water utilities regulated by the Public Service Commission, state agencies, municipalities and counties and municipal and county agencies may be voluntary members of such a one-call system.

(b) Each member shall provide the following information to the one-call system on forms developed and provided for that purpose by the one-call system:

(1) The name of the member;

(2) The geographic location of the member’s underground facilities as prescribed by the one-call system; and

(3) The member’s office address and telephone number to which inquiries may be directed as to the locations of the operator’s underground facilities.

(c) Each member shall revise in writing the information required by subsection (b) of this section as soon as reasonably practicable, but not to exceed one hundred eighty days, after any change.

(d) Within forty-eight hours, excluding Saturdays, Sundays and legal federal or state holidays, after receipt of a notification
by the one-call system from an excavator of a specific area
where excavation or demolition will be performed, the operator
of underground facilities shall:

(1) Respond to such notification by providing to the
excavator the approximate location, within two feet horizontally
from the outside walls of such facilities, and type of under-
ground facilities at the site; and

(2) Use the color code prescribed in section six of this
article when providing temporary marking of the approximate
location of underground facilities; or

(3) Notify the excavator that the operator did not leave a
temporary marking of the location of underground facilities
because there are no lines in the area of the proposed excava-
tion or demolition.

(e) Failure of an operator who is required to be a member
to comply with the provisions of this article may not prevent the
excavator from proceeding but shall bar the operator from
recovery of any costs associated with damage to its under-
ground facilities resulting from such failure, except for damage
caused by the willful or intentional act of the excavator.

(f) Notwithstanding the provisions of subsection (e) of this
section, a member is not barred from recovery under said
subsection for failure to comply with subdivision (1), subsec-
tion (d) of this section, but shall have his or her right to recover,
if any, determined by common law, if the operator responded to
one-call notification in a timely manner, but was unable to
accurately locate lines because such lines were nonmetallic and
had no locating wire or other marker.

§24C-1-5. Duties and responsibilities of excavators; failure of
excavator to comply; civil penalties.
(a) Except as provided in section seven of this article, any person who intends to perform excavation or demolition work shall:

(1) Not less than forty-eight hours, excluding Saturdays, Sundays and federal or state legal holidays, nor more than ten work days prior to the beginning of such work, notify the one-call system of the intended excavation or demolition and provide the following information:

(A) Name of the individual making the notification;

(B) Company name;

(C) Telephone number;

(D) Company address;

(E) Work site location; including county, nearest city or town, street location, nearest cross street and landmarks or other location information;

(F) Work to be performed;

(G) Whether or not use of explosives is planned;

(H) Name and telephone number of individual to contact; and

(I) Starting date and time;

(2) Notify the one-call system not less than twenty-four hours, excluding Saturdays, Sundays and federal or state legal holidays, in advance of any change in the starting date or time of the intended work; and

(3) Instruct each equipment operator involved in the intended work:
(A) To perform all excavation or demolition work in such a manner as to avoid damage to underground facilities in the vicinity of the intended work site, including hand digging, when necessary;

(B) To report immediately any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or discovered in the course of the excavation or demolition and to allow the operator a reasonable time to accomplish necessary repairs before continuing the excavation or demolition in the immediate area of such facilities;

(C) To immediately alert the public at or near the work site as to any emergency created or discovered at or near such work site;

(D) (i) To report immediately to the appropriate medical, law-enforcement and fire prevention authorities any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which creates an “emergency” as defined in subdivision (1), subsection (c), section two of this article. For purposes of this subdivision, an excavator calling the “911” emergency telephone number satisfies this requirement; or

(ii) To notify the one-call system, within twenty-four hours, of any break or leak in underground facilities, or any dent, gouge, groove or other damage to such facilities, made or in the course of the excavation or demolition which does not create an “emergency” as defined in subdivision (1), subsection (c), section two of this article.

(E) To maintain a clearance between each underground facility and the cutting edge or point of any powered equipment, taking into account the known limit of control of such
cutting edge or point, as may be reasonably necessary for the protection of such facility;

(F) To protect and preserve markers, stakes and other designations identifying the location of underground facilities at the work site; and

(G) To provide such support for underground facilities in the location of the work site, including during backfilling operations, as may be reasonably necessary for the protection of such facilities. Temporary support and backfill shall provide support for such facilities at least equivalent to the previously existing support.

(b) If any underground facility is damaged by a person who has failed to comply with any provision of this section, that person is liable to the operator of the underground facility for the total cost to repair the damage in an amount equal to that as is normally computed by the operator, provided that the operator:

(1) Is a member of the one-call system covering the area in which the damage to the facility takes place; and

(2) Upon receiving the proper notice in accordance with this article, has complied with the provisions of section three of this article: Provided, That a member is not barred from recovering costs solely for his or her own failure to comply with subdivision (1), subsection (d) of said section, but shall have his or her right to recover, if any, determined by common law, if the conditions of subsection (f) of said section are met.

The liability of such person for such damage is not limited by reason of this article.

(c) If any excavation or demolition causes damage to any underground facilities owned by an operator who is not required
88 to be a member of a one-call system and who is not a member
89 of such a system at the time of damage, the liability of the
90 person causing damage shall be determined solely by applicable
91 principles of common law.

92 (d) If any excavation or demolition causes damage to any
93 other person or property, the liability of the person causing
94 damage shall be determined solely by applicable principles of
95 common law.

96 (e) Any person who fails to notify the one-call system prior
97 to performing any excavation or demolition, or fails to follow
98 the reporting provisions of this section, or who violates any
99 other provision of this section, shall be guilty of a misdemeanor
100 and, upon conviction thereof, shall be fined not more than five
101 thousand dollars.

102 (f) Nothing in this chapter may be construed to restrict or
103 expand the rights, duties and liabilities provided in common law
104 or by other provisions of this code of an operator who is not
105 required to be a member of a one-call system and who is not a
106 member of such a system.

CHAPTER 153

(Com. Sub. for H. B. 4023 — By Delegates Brown, Amores,
Caputo, Hartman, Hrutkay and Rick Thompson)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §21-5C-2 of the Code of West
Virginia, 1931, as amended, relating to increasing the state
minimum and training wage; linking the state minimum and training wage to the federal minimum and training wage; making all departments and agencies of the State of West Virginia subject to the minimum wage established in this section regardless of federal law; and providing the minimum wage will not fall below the federal minimum wage.

Be it enacted by the Legislature of West Virginia:

That §21-5C-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS.


(a) Minimum wage:

(1) After the thirtieth day of June, two thousand six, every employer shall pay to each of his or her employees wages at a rate not less than five dollars and eighty-five cents per hour.

(2) After the thirtieth day of June, two thousand seven, every employer shall pay to each of his or her employees wages at a rate not less than six dollars and fifty-five cents per hour.

(3) After the thirtieth day of June, two thousand eight, every employer shall pay to each of his or her employees wages at a rate not less than seven dollars and twenty-five cents per hour.

(4) At such time as the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1) is equal to or greater than the wage rate prescribed in subdivision (3) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(a)(1). The minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum
hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. § 206(a)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(b) Training wage:

(1) Notwithstanding the provisions set forth in subsection (a) of this section to the contrary, an employer may pay an employee first hired after the thirtieth day of June, two thousand six, a subminimum training wage not less than five dollars and fifteen cents per hour.

(2) An employer may not pay the subminimum training wage set forth in subdivision (1) of this subsection to any individual:

(i) Who has attained or attains while an employee of the employer, the age of twenty years; or

(ii) For a cumulative period of not more than ninety days per employee: Provided, That if any business has not been in operation for more than ninety days at the time the employer hired the employee, the employer may pay the employee the subminimum training wage set forth in subdivision (1) of this subsection for an additional period not to exceed ninety days.

(3) At such time as the federal subminimum training wage as prescribed by 29 U.S.C. § 206(g)(1) is equal to or greater than the wage rate prescribed in subdivision (1) of this subsection, every employer shall pay to each of his or her employees wages at a rate of not less than the federal minimum hourly wage as prescribed by 29 U.S.C. § 206(g)(1). The
minimum wage rates required under this subparagraph shall be thereafter adjusted in accordance with adjustments made in the federal minimum hourly rate. The adoption of the federal minimum wage provided by this subdivision includes only the federal minimum hourly rate prescribed in 29 U.S.C. § 206(g)(1) and does not include other wage rates, or conditions, exclusions, or exceptions to the federal minimum hourly wage rate. In addition, adoption of the federal minimum hourly wage rate does not extend or modify the scope or coverage of the minimum wage rate required under this subdivision.

(c) Notwithstanding any provision or definition to the contrary, the wages established pursuant to this section shall be applicable to all individuals employed by the State of West Virginia, its agencies, and departments, regardless if such employee or employer are subject to any federal act relating to minimum wage: Provided, That at no time shall the minimum wage established pursuant to this section fall below the federal minimum hourly wage as prescribed by 29 U. S. C. §206(a)(1).

CHAPTER 154

(Com. Sub. for S. B. 247 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed January 23, 2006; in effect from passage.]
[Approved by the Governor on January 26, 2006.]

AN ACT to repeal §22A-2-69 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §15–5B-1, §15-5B-2, §15–5B-3, §15–5B-4 and §15–5B-5; to amend and reenact §22A-2-55 and §22A-2-66 of said
code; and to amend said code by adding thereto a new section, designated §24-6-14, all relating to mine and industrial emergencies; creating the Mine and Industrial Accident Rapid Response System; providing requirements for protective equipment in underground mines; providing for criminal penalties for the unauthorized removal of or tampering with certain protective equipment; defining certain terms; providing for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements; providing rule-making authority; and clarifying the responsibilities of county answering points.

Be it enacted by the Legislature of West Virginia:

That §22A-2-69 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §15–5B-1, §15–5B-2, §15–5B-3, §15–5B-4 and §15–5B-5; that §22A-2-55 and §22A-2-66 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-6-14, all to read as follows:

Chapter

15. Public Safety.

22A. Miners' Health, Safety and Training.


CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.

§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

§15-5B-2. Mine and industrial accident emergency operations center.

§15-5B-3. Emergency mine response.

§15-5B-4. Study of other industrial emergencies.

§15-5B-5. Rule-making authority.
§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

(a) The Legislature finds that the health and safety of persons working in and around the mining industry and other industries is of paramount concern to the people of West Virginia and that deaths and serious injuries resulting from dangerous working conditions cause grief and suffering to workers and their families. The Legislature further finds that there is an urgent need to provide more effective means and measures for improving emergency response and communications for dealing with mine and industrial accidents. The Legislature declares that it is in the best interest of the citizens of West Virginia to designate an emergency telephone number for mining or industrial personnel to initiate a rapid emergency response to any mine or industrial accident. Provision of a single, primary emergency number through which emergency services can be quickly and efficiently obtained and through which the response of various state agencies charged by law with responding to mine and industrial emergencies can be coordinated will significantly contribute to the public good. The Mine and Industrial Accident Rapid Response System will provide a vital resource to the citizens of West Virginia by providing a critical connection between the Director of the Office of Miners’ Health, Safety and Training, the Division of Homeland Security and Emergency Management, local and regional emergency services organizations and other responsible agencies.

(b) The Mine and Industrial Accident Rapid Response System is hereby created and shall consist of:

(1) The Mine and Industrial Accident Emergency Operations Center established in section two of this article; and
§15-5B-2. Mine and industrial accident emergency operations center.

(a) The Director of the Division of Homeland Security and Emergency Management, working in conjunction with the Office of Miners’ Health, Safety and Training, shall maintain the Mine and Industrial Accident Emergency Operations Center, which shall be the official and primary state government 24-hour-a-day communications center for dealing with mine and industrial accidents.

(b) The emergency operations center shall be operated twenty-four hours a day, seven days a week by emergency service personnel employed by the director to provide emergency assistance and coordination to mine and industrial accidents or emergencies.

(c) The emergency operations center shall be readily accessible twenty-four hours a day at a statewide telephone number established and designated by the director.

§15-5B-3. Emergency mine response.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners’ Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, such changes shall be provided immediately to the emergency operations center. The mine emergency contact list shall include the following information:
11 (1) The names and telephone numbers of the Director of the
12 Office of Miners’ Health, Safety and Training, or his or her
13 designee, including at least one telephone number at which the
14 Director or designee may be reached at any time;

15 (2) The names and telephone numbers of all district mine
16 inspectors, including at least one telephone number for each
17 inspector at which each inspector may be reached at any time;

18 (3) A current listing of all regional offices or districts of the
19 Office of Miners’ Health, Safety and Training, including a
detailed description of the geographical areas served by each
20 regional office or district; and

21 (4) The names, locations and telephone numbers of all mine
22 rescue stations, including at least one telephone number for
23 each station that may be called twenty-four hours a day and a
24 listing of all mines that each mine rescue station serves in
25 accordance with the provisions of section thirty-five, article
26 one, chapter twenty-two-a of this code.

28 (b) Upon the receipt of an emergency call regarding any
29 accident, as defined in section sixty-six, article two, chapter
30 twenty-two-a of this code, in or about any mine, the emergency
31 operations center shall immediately notify:

32 (1) The Director of the Office of Miners’ Health, Safety and
33 Training or his or her designee;

34 (2) The district mine inspector assigned to the district or
35 region in which the accident occurred; and

36 (3) Local emergency service personnel in the area in which
37 the accident occurred.

38 (c) The director or his or her designee shall determine the
39 necessity for and contact all mine rescue stations that provide
40 rescue coverage to the mine in question.
(d) In the event that an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, is initially received by a county answering point, as defined in article six, chapter twenty-four of this code, the call shall be immediately forwarded to the Mine and Industrial Accident Emergency Operations Center.

(e) Nothing in this section shall be construed to relieve an operator, as defined in section two, article one, chapter twenty-two-a of this code, from any reporting or notification obligation under federal law.

(f) The Mine and Industrial Accident Rapid Response System and the emergency operations center are designed and intended to provide communications assistance to emergency responders and other responsible persons. Nothing in this section shall be construed to conflict with the responsibility and authority of an operator to provide mine rescue coverage in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code or the authority of the Director of the Office of Miners’ Health, Safety and Training to assign mine rescue teams under the provisions of subsection (d) of said section or to exercise any other authority provided in chapter twenty-two-a of this code.

§15-5B-4. Study of other industrial emergencies.

The Director of the Division of Homeland Security and Emergency Management shall immediately cause a study to be conducted to determine the feasibility of providing emergency coverage to other industrial, manufacturing, chemical or other emergencies through the Mine and Industrial Accident Rapid Response System. On or before the first day of November, two thousand six, the director shall submit a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the findings of his or her study and
§15-5B-5. Rule-making authority.

1 The Director of the Division of Homeland Security and Emergency Management shall propose emergency and legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code regarding the implementation and administration of the Mine and Industrial Accident Rapid Response System. The requirements of this article enacted during the regular session of the Legislature in January, two thousand six, shall not be implemented until the emergency rule authorized herein has been approved.

CHAPTER 22A. MINERS’ HEALTH, SAFETY AND TRAINING.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing.

§22A-2-66. Accident; notice; investigation by Office of Miners’ Health, Safety and Training.

§22A-2-55. Protective equipment and clothing.

(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing.

(c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntletted cuffs shall not be worn around moving equipment.
(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings.

(e) Approved eye protection shall be worn by all persons while being transported in open-type man trips.

(f)(1) A self-contained self-rescue device approved by the Director shall be worn by each person underground or kept within his immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of such device and refresher training courses for all underground employees shall be held during each calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. Intrinsically safe battery-powered strobe lights shall be affixed to each cache and shall be capable of automatic activation in the event of an emergency. A luminescent sign with the words “SELF-CONTAINED SELF-RESCUER” or “SELF-CONTAINED SELF-RESCUERS” shall be conspicuously posted at each cache and luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the
(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or battery-powered strobe light from the mine or mine site with the intent to permanently deprive the operator of the device or light or knowingly tampers with or attempts to tamper with such device or light shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(g)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for
not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(h)(1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code.

(j) The penalties set forth in this article enacted during the regular session of the Legislature in January, two thousand six, shall become effective the first day of July, two thousand six.
§22A-2-66. Accident; notice; investigation by Office of Miners’ Health, Safety and Training.

(a) For the purposes of this section, the term “accident” means:

1. The death of an individual at a mine;

2. An injury to an individual at a mine which has a reasonable potential to cause death;

3. The entrapment of an individual;

4. The unplanned inundation of a mine by a liquid or gas;

5. The unplanned ignition or explosion of gas or dust;

6. The unplanned ignition or explosion of a blasting agent or an explosive;

7. An unplanned fire in or about a mine not extinguished within five minutes of ignition;

8. An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;

9. A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

10. An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank;

11. Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and
(12) An event at a mine which causes death or bodily injury
to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine
or the machinery connected therewith, it is the duty of the
operator or the mine foreman in charge of the mine to give
notice, within fifteen minutes of ascertaining the occurrence of
an accident, to the Mine and Industrial Accident Emergency
Operations Center at the statewide telephone number estab-
lished by the Director of the Division of Homeland Security and
Emergency Management pursuant to the provisions of article
five-b, chapter fifteen of this code stating the particulars of the
accident: Provided, That the operator or the mine foreman in
charge of the mine may comply with this notice requirement by
immediately providing notice to the appropriate local organiza-
tion for emergency services as defined in section eight, article
five of said chapter, or the appropriate local emergency
telephone system operator as defined in article six, chapter
twenty-four of this code: Provided, however, That nothing in
this subsection shall be construed to relieve the operator from
any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners’ Health, Safety and
Training shall impose, pursuant to rules authorized in this
section, a civil administrative penalty of one hundred thousand
dollars on the operator if it is determined that the operator or
the mine foremen in charge of the mine failed to give immedi-
ate notice as required in this section: Provided, That the director
may waive imposition of the civil administrative penalty at any
time if he or she finds that the failure to give immediate notice
was caused by circumstances wholly outside the control of the
operator.

(d) If anyone is killed, the inspector shall immediately go
to the scene of the accident and make recommendations and
render assistance as he or she may deem necessary for the
future safety of the men and investigate the cause of the
explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners’ Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.


Each county answering point that receives a call reporting an accident in or about any mine shall immediately route the call to the Mine and Industrial Accident Emergency Operations Center created pursuant to section two, article five-a, chapter fifteen of this code.

CHAPTER 155

(Com. Sub. for H. B. 4498 — By Delegates Ron Thompson, Beach, Houston, Iaquinta, H. White, Marshall and Kominar)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §32A-2-5 of the Code of West Virginia, 1931, as amended, relating to fees for licensing of money service businesses.
Be it enacted by the Legislature of West Virginia:

That §32A-2-5 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-2-5. Fees.

(a) The commissioner shall charge and collect the license application fees, license fees, license renewal fees, and examination fees in amounts reasonable and necessary to defray the cost of administering this article as follows:

1. For applying for a license, an application and licensing fee of one thousand dollars, plus twenty dollars for each location within the state at which the applicant and its authorized delegates are conducting business or propose to conduct business excepting the applicant’s principal place of business.

2. For renewal of a license, a fee of two hundred fifty dollars plus twenty dollars for each location within the state at which the licensee and its authorized delegates are conducting business or propose to conduct business excepting the applicant’s principal place of business.

3. The total of fees required by subdivisions (1) or (2) of this subsection may not exceed ten thousand dollars for any one application.

4. For a change in address by the licensee of its principal place of business, a fee of one hundred dollars.

5. For failure to timely submit an application of renewal or file audited financial statements required for renewal as set forth in this article, a penalty fee of ten dollars per day for each
23  day late, unless an extension of time has been granted or the fee
24  waived by the commissioner.

25  (b) Beginning one year after the effective date of this
26  article, the commissioner may, by rules proposed for legislative
27  approval in accordance with the provisions of article three,
28  chapter twenty-nine-a of this code, amend the fees set forth in
29  this section and in subsection (b), section eleven of this article.

30  (c) Fees and moneys received and collected under this
31  article shall be paid into the special revenue account in the State
32  Treasury for the Division of Banking established in section
33  eight, article two, chapter thirty-one-a of this code.

CHAPTER 156

(Com. Sub. for S. B. 492 — By Senator Bailey)

[Passed March 10, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §24A-6-7, relating to
providing that indemnity agreements in motor carrier transportation contracts are void and unenforceable as against public policy;
and effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24A-6-7, to read as follows:
ARTICLE 6. DUTIES AND PRIVILEGES OF MOTOR CARRIERS SUBJECT TO REGULATION OF THE COMMISSION.

§24A-6-7. Indemnity agreement in motor carrier transportation contracts void.

(a) Notwithstanding any provision of law to the contrary, a provision, clause, covenant or agreement contained in, collateral to or affecting a motor carrier transportation contract entered into on or after the first day of July, two thousand six, that purports to indemnify, defend or hold harmless, or has the effect of indemnifying, defending or holding harmless, the promisee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the promisee is against the public policy of this state and is void and unenforceable.

(b) In this section:

(1) “Motor carrier transportation contract” means a contract, agreement or understanding covering:

(A) The transportation of property for compensation or hire by the motor carrier;

(B) Entrance on property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(C) A service incidental to activity described in paragraph (A) or (B), including, but not limited to, storage of property.

(2) “Promisee” means the promisee and any agents, employees, servants or independent contractors who are directly responsible to the promisee except for motor carriers party to a motor carrier transportation contract with promisee and such motor carrier’s agents, employees, servants or independent contractors directly responsible to such motor carrier.
(3) The term "motor carrier transportation contract" shall not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America, as that agreement may be amended by the Intermodal Interchange Executive Committee, or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment.

CHAPTER 157

(S. B. 680 — By Senator McCabe)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24A-6A-15, relating to granting the Public Service Commission authority and responsibilities under the Single State Registration System and the Unified Carrier Registration System with regard to motor carriers operating in interstate commerce.

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 §24A-6A-15, to read as follows:

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

(a) The Public Service Commission is designated as the appropriate state agency to implement and enforce the Unified Carrier Registration System established by the Federal Unified Carrier Registration Act of 2005, 49 U. S. C. §14504a, as amended.

(b) The commission is authorized to promulgate rules pursuant to its general rule-making authority, if necessary, including emergency rules, to implement the federal law and regulations established under the Unified Carrier Registration Act of 2005.

CHAPTER 158

(S. B. 605 — By Senator Plymale)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §17A-3-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-7-12a of said code, all relating to proof of payment of personal property taxes as a prerequisite to registration or renewal of a vehicle or motorboat registration; providing for alternative methods of verification of tax payment; providing that current year tax receipt may substitute for previous calendar year tax receipt; and eliminating the requirement that registrant who renews for two years furnish two previous calendar year receipts.

Be it enacted by the Legislature of West Virginia:

That §17A-3-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-12a of said code be amended and reenacted, all to read as follows:
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Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and
Antitheft Provisions.
20. Natural Resources.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE
OF CERTIFICATES OF TITLE.

§17A-3-3a. Payment of personal property taxes and emergency
ambulance fees prerequisite to registration or
renewal; duties of assessors; schedule of automobile values.

(a) Certificates of registration and renewal of registration
of any vehicle or registration plates for any vehicle may not be
issued or furnished by the Division of Motor Vehicles, or any
other officer charged with the duty, unless the applicant for the
certificate or registration plate, except an applicant exempt from
payment of registration fees under section eight, article ten of
this chapter, has furnished the receipt provided in this section
or the division has received verification by electronic means to
show full payment of:

(1) The personal property taxes for the current calendar
year or the calendar year which immediately precedes the
calendar year in which application is made on all vehicles
which were registered with the Division of Motor Vehicles in
the applicant's name on the tax day for the former calendar
year; and

(2) All emergency ambulance fees owed pursuant to section
seventeen, article fifteen, chapter seven of this code at the time
the receipt is prepared, except for any of the fees that are not yet
past due: Provided, That any county which does not impose
emergency ambulance fees or which chooses not to show
emergency ambulance fees on the personal property tax receipt
may issue a receipt without complying with this subdivision
and the Commissioner of Motor Vehicles may issue or renew
registration without regard to such fees.

(b) If the applicant contends that any registered vehicle was
not subject to personal property taxation for that year or that he
or she does not owe any emergency ambulance fees if a receipt
for fees are required by the county, he or she shall furnish the
information and evidence as the Commissioner of Motor
Vehicles may require to substantiate his or her contention.

(c) The assessor shall require any person having a duty to
make a return of property for taxation to him or her to furnish
information identifying each vehicle subject to the registration
provisions of this chapter. When the property taxes on any
vehicle have been paid, the officer to whom the payment was
made shall deliver to the person paying the taxes a written or
printed receipt for the payment and shall retain for his or her
records a duplicate of the receipt. It is the duty of the assessor
and sheriff, respectively, to see that the assessment records and
the receipts contain information adequately identifying the
vehicle as registered under the provisions of this chapter. The
officer receiving payment shall sign each receipt in his or her
own handwriting.

(d) Each receipt given to a taxpayer for payment of
personal property taxes on a vehicle may indicate on the receipt
whether the taxpayer has paid all emergency ambulance fees
owed pursuant to section seventeen, article fifteen, chapter
seven of this code at the time the receipt is prepared, except for
any of the fees that are not yet past due: Provided, That each
county shall include on the same notice of personal property
taxes due the additional amount due for all emergency ambu-
lance fees.
(e) The State Tax Commissioner shall annually compile a schedule of automobile values based on the lowest values shown in a nationally accepted used car guide. The State Tax Commissioner shall furnish the schedule to each assessor and it shall be used by him or her as a guide in placing the assessed values on all automobiles in his or her county.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW-ENFORCEMENT, MOTOR BOATING, LITTER.

§20-7-12a. Payment of personal property taxes prerequisite to application for certificate or renewal of number; duties of assessors; schedule of motorboat values.

Certificates of number and renewals therefor shall not be issued or furnished by the Division of Motor Vehicles, or any other officer charged with the duty, unless the applicant therefor furnishes the receipt hereinafter provided to show full payment of the personal property taxes for the current calendar year or the calendar year which immediately precedes the calendar year in which application is made on all motorboats which were listed with the Division of Motor Vehicles in the applicant’s name on the tax day for the current or former calendar year or the division has received verification of full payment of personal property taxes by electronic means. If the applicant contends that any motorboat so listed was not subject to personal property taxation for that year, he or she shall furnish the information and evidence as the Commissioner of Motor Vehicles may require to substantiate his or her contention.

The assessor shall require any person having a duty to make a return of property for taxation to him or her to furnish information identifying each motorboat subject to the number-ing provisions of this article. When the property taxes on the motorboat have been paid, the officer to whom the payment was made shall deliver to the person paying the taxes a written or
22 printed receipt therefor and shall retain for his or her records a
duplicate of the receipt. The assessor and sheriff, respectively,
shall see that the assessment records and the receipts contain
information adequately identifying the motorboat as registered
under the provisions of this article. The officer receiving
payment shall sign each receipt in his or her own handwriting.

28 The assessors shall commence their duties hereunder during
the tax year one thousand nine hundred eighty-nine and the
Division of Motor Vehicles shall commence its duties hereun-
der as of the first day of January, one thousand nine hundred
ninety.

33 The State Tax Commissioner shall annually compile a
schedule of motorboat values, based on the lowest values
shown in a nationally accepted used motorboat guide, which
schedule shall be furnished to each assessor and shall be used
by him or her as a guide in placing the assessed values on all
motorboats in his or her county.

CHAPTER 159

(Com. Sub. for S. B. 183 — By Senators Facemyer,
McKenzie, Jenkins and Love)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §17A-3-4, §17A-3-14 and §17A-3-23
of the Code of West Virginia, 1931, as amended, all relating to
motor vehicle registration generally; providing for the issuance of
a special plate for recipients of the Armed Forces Air Medal;
extending the time to comply with requirements for the issuance
of a special plate for members of the Knights of Columbus; providing for the issuance of a special Lions International membership license plate; providing for the issuance of a special plate recognizing organ and tissue donors; providing for the issuance of a special West Virginia Bar Association membership license plate; providing for the issuance of a special plate with the logo “SHARE THE ROAD”; providing for the issuance of a special plate honoring coal miners; providing for the issuance of special plates for present and former Boy Scouts and Eagle Scouts; providing for the issuance of a special plate memorializing victims of domestic violence; providing for the issuance of a special plate demonstrating association with or support of the University of Charleston; providing for the issuance of a special plate for members of the Sons of the American Revolution; providing for the issuance of a special plate for horse enthusiasts; providing for the issuance of a special plate for the next of kin of a member of the armed forces killed in combat; providing for the issuance of a special plate for retired or former Justices of the Supreme Court of Appeals of West Virginia; assessing a special initial application fee and a special annual fee therefor; revising the criteria before the commissioner may initiate the design and production of a special license plate; encouraging the commissioner to utilize technology in the design, production and issuance of registration plates, including offering internet renewal of vehicle registration; establishing a new license plate issued to a city or municipality for motor vehicles of a city or municipal law enforcement department; specifying the design and a one-time fee therefor; providing for the issuance of special license plates for certain vehicles titled in the name of the Division of Public Transit or a public transit authority to transport persons in the public interest, without charge therefor; providing for the design therefor; and exempting certain vehicles titled in the name of an urban mass transit authority and certain nonprofit entities from the tax imposed upon the privilege of certification of title of a vehicle by the Division of Motor Vehicles.
Be it enacted by the Legislature of West Virginia:

That §17A-3-4, §17A-3-14 and §17A-3-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer’s serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant’s title and of any liens or encumbrances upon the vehicle, the names and addresses of the
holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division’s electronic record of a certificate of title is admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to five percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section: Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new or secondhand. If the vehicle is acquired through gift or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the Division of Motor Vehicles the tax imposed by this section which is five percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: Provided, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the State of West Virginia.
48 (3) The Division of Motor Vehicles may issue a certificate
49 of registration and title to an applicant if the applicant provides
50 sufficient proof to the Division of Motor Vehicles that the
51 applicant has paid the taxes and fees required by this section to
52 a motor vehicle dealership that has gone out of business or has
53 filed bankruptcy proceedings in the United States bankruptcy
54 court and the taxes and fees so required to be paid by the
55 applicant have not been sent to the division by the motor
56 vehicle dealership or have been impounded due to the bank-
57 ruptcy proceedings: Provided, That the applicant makes an
58 affidavit of the same and assigns all rights to claims for money
59 the applicant may have against the motor vehicle dealership to
60 the Division of Motor Vehicles.

61 (4) The Division of Motor Vehicles shall issue a certificate
62 of registration and title to an applicant without payment of the
63 tax imposed by this section if the applicant is a corporation,
64 partnership or limited liability company transferring the vehicle
65 to another corporation, partnership or limited liability company
66 when the entities involved in the transfer are members of the
67 same controlled group and the transferring entity has previously
68 paid the tax on the vehicle transferred. For the purposes of this
69 section, control means ownership, directly or indirectly, of
70 stock or equity interests possessing fifty percent or more of the
71 total combined voting power of all classes of the stock of a
72 corporation or equity interests of a partnership or limited
73 liability company entitled to vote or ownership, directly or
74 indirectly, of stock or equity interests possessing fifty percent
75 or more of the value of the corporation, partnership or limited
76 liability company.

77 (5) The tax imposed by this section does not apply to
78 vehicles to be registered as Class H vehicles or Class M
79 vehicles, as defined in section one, article ten of this chapter,
80 which are used or to be used in interstate commerce. Nor does
81 the tax imposed by this section apply to the titling of Class B
82 vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of the State of West Virginia as a nonprofit corporation for protection of life or property. The total amount of revenue
collected by reason of this tax shall be paid into the state road
fund and expended by the Commissioner of Highways for
matching federal funds allocated for West Virginia. In addition
to the tax, there is a charge of five dollars for each original
certificate of title or duplicate certificate of title so issued:
Provided, That this state or any political subdivision of this
state or any volunteer fire department or duly chartered rescue
squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long
as the vehicle is owned or held by the original holder of the
certificate and need not be renewed annually, or any other time,
except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the
owner of a motor vehicle and the tax imposed by this section
previously has been paid to the Division of Motor Vehicles on
that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section
is not required to pay the tax a second time for the same motor
vehicle, but is required to pay a charge of five dollars for the
certificate of retitle of that motor vehicle, except that the tax
shall be paid by the person when the title to the vehicle has
been transferred either in this or another state from the person
to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any
passenger vehicle offered for rent in the normal course of
business by a daily passenger rental car business as licensed
under the provisions of article six-d of this chapter. For
purposes of this section, a daily passenger car means a Class A
motor vehicle having a gross weight of eight thousand pounds
or less and is registered in this state or any other state. In lieu of
the tax imposed by this section, there is hereby imposed a tax
of not less than one dollar nor more than one dollar and fifty
cents for each day or part of the rental period. The commis-
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149 The commissioner shall propose an emergency rule in accordance with the
150 provisions of article three, chapter twenty-nine-a of this code to
151 establish this tax.

(12) The tax imposed by this article does not apply to the
152 titling of any vehicle purchased by a senior citizen service
153 organization which is exempt from the payment of income
154 taxes under the United States Internal Revenue Code, Title 26
155 U. S. C. §501(c)(3) and which is recognized to be a bona fide
156 senior citizen service organization by the senior services bureau
157 existing under the provisions of article five, chapter sixteen of
158 this code.

(13) The tax imposed by this section does not apply to the
159 titling of any vehicle operated by an urban mass transit
160 authority as defined in article twenty-seven, chapter eight of
161 this code or a nonprofit entity exempt from federal and state
162 income tax under the Internal Revenue Code and whose
163 purpose is to provide mass transportation to the public at large
164 designed for the transportation of persons and being operated
165 for the transportation of persons in the public interest.

(c) Notwithstanding any provisions of this code to the
169 contrary, the owners of trailers, semitrailers, recreational
170 vehicles and other vehicles not subject to the certificate of title
171 tax prior to the enactment of this chapter are subject to the
172 privilege tax imposed by this section: Provided, That the
173 certification of title of any recreational vehicle owned by the
174 applicant on the thirtieth day of June, one thousand nine
175 hundred eighty-nine, is not subject to the tax imposed by this
176 section: Provided, however, That mobile homes, manufactured
177 homes, modular homes and similar nonmotive propelled
178 vehicles, except recreational vehicles and house trailers,
179 susceptible of being moved upon the highways but primarily
180 designed for habitation and occupancy, rather than for trans-
181 porting persons or property, or any vehicle operated on a
nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.
(f) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than one hundred dollars nor more than one thousand dollars, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than two thousand dollars, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.

(g) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(h) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the State Building Code as established by legislative rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.
§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

(a) The division upon registering a vehicle shall issue to the owner one registration plate for a motorcycle, trailer, semitrailer or other motor vehicle.

(b) Registration plates issued by the division shall meet the following requirements:

(1) Every registration plate shall be of reflectorized material and have displayed upon it the registration number assigned to the vehicle for which it is issued; the name of this state, which may be abbreviated; and the year number for which it is issued or the date of expiration of the plate.

(2) Every registration plate and the required letters and numerals on the plate shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight: Provided, That the requirements of this subdivision shall not apply to the year number for which the plate is issued or the date of expiration.

(3) Registration numbering for registration plates shall begin with number two.

(c) The division may not issue, permit to be issued or distribute any special registration plates except as follows:

(1) The Governor shall be issued two registration plates, on one of which shall be imprinted the numeral one and on the other the word one.

(2) State officials and judges may be issued special registration plates as follows:
(A) Upon appropriate application, the division shall issue to the Secretary of State, State Superintendent of Schools, Auditor, Treasurer, Commissioner of Agriculture and the Attorney General, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the State of West Virginia and the judges of the United States Court of Appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: Provided, That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.

(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

(C) The division shall charge an annual fee of fifteen dollars for every registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(3) The division may issue members of the National Guard forces special registration plates as follows:

(A) Upon receipt of an application on a form prescribed by the division and receipt of written evidence from the chief
executive officer of the Army National Guard or Air National
Guard, as appropriate, or the commanding officer of any United
States armed forces reserve unit that the applicant is a member
thereof, the division shall issue to any member of the National
Guard of this state or a member of any reserve unit of the
United States armed forces a special registration plate designed
by the commissioner for any number of Class A motor vehicles
owned by the member. Upon presentation of written evidence
of retirement status, retired members of this state’s Army or Air
National Guard, or retired members of any reserve unit of the
United States armed forces, are eligible to purchase the special
registration plate issued pursuant to this subdivision.

(B) The division shall charge an initial application fee of
ten dollars for each special registration plate issued pursuant to
this subdivision, which is in addition to all other fees required
by this chapter. All initial application fees collected by the
division shall be deposited into a special revolving fund to be
used in the administration of this section.

(C) A surviving spouse may continue to use his or her
deceased spouse’s National Guard forces license plate until the
surviving spouse dies, remarries or does not renew the license
plate.

(4) Specially arranged registration plates may be issued as
follows:

(A) Upon appropriate application, any owner of a motor
vehicle subject to Class A registration, or a motorcycle subject
to Class G registration, as defined by this article, may request
that the division issue a registration plate bearing specially
arranged letters or numbers with the maximum number of
letters or numbers to be determined by the commissioner. The
division shall attempt to comply with the request wherever
possible.
(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of chapter twenty-nine-a of this code regarding the orderly distribution of the plates: Provided, That for purposes of this subdivision, the registration plates requested and issued shall include all plates bearing the numbers two through two thousand.

(C) An annual fee of fifteen dollars shall be charged for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter.

(5) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.
(6) The division may issue disabled veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any disabled veteran who is exempt from the payment of registration fees under the provisions of this chapter a registration plate for a vehicle titled in the name of the qualified applicant which bears the letters “DV” in red and also the regular identification numerals in red.

(B) A surviving spouse may continue to use his or her deceased spouse’s disabled veterans license plate until the surviving spouse dies, remaries or does not renew the license plate.

(C) A qualified disabled veteran may obtain a second disabled veterans license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(7) The division may issue recipients of the distinguished Purple Heart medal special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any armed service person holding the distinguished Purple Heart medal for persons wounded in combat a registration plate for a vehicle titled in the name of the qualified applicant bearing letters or numbers. The registration plate shall be designed by the Commissioner of Motor Vehicles and shall denote that those individuals who are granted this special registration plate are recipients of the Purple Heart. All letterings shall be in purple where practical.
(B) Registration plates issued pursuant to this subdivision are exempt from all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s Purple Heart medal license plate until the surviving spouse dies, remarries or does not renew the license plate.

(D) A recipient of the Purple Heart medal may obtain a second Purple Heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the Commissioner of Motor Vehicles.

(B) Registration plates issued pursuant to this subdivision are exempt from the payment of all registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s survivors of the attack on Pearl Harbor license plate until the surviving spouse dies, remarries or does not renew the license plate.
(D) A survivor of the attack on Pearl Harbor may obtain a second survivors of the attack on Pearl Harbor license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(9) The division may issue special registration plates to nonprofit charitable and educational organizations authorized under prior enactment of this subdivision as follows:

(A) Approved nonprofit charitable and educational organizations previously authorized under the prior enactment of this subdivision may accept and collect applications for special registration plates from owners of Class A motor vehicles together with a special annual fee of fifteen dollars, which is in addition to all other fees required by this chapter. The applications and fees shall be submitted to the Division of Motor Vehicles with the request that the division issue a registration plate bearing a combination of letters or numbers with the organizations’ logo or emblem, with the maximum number of letters or numbers to be determined by the commissioner.

(B) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the procedures for and approval of special registration plates issued pursuant to this subdivision.

(C) The commissioner shall set an appropriate fee to defray the administrative costs associated with designing and manufacturing special registration plates for a nonprofit charitable or educational organization. The nonprofit charitable or educa-
tional organization shall collect this fee and forward it to the division for deposit in a special revolving fund to pay the administrative costs. The nonprofit charitable or educational organization may also collect a fee for marketing the special registration plates.

(D) The commissioner may not approve or authorize any additional nonprofit charitable and educational organizations to design or market special registration plates.

(10) The division may issue specified emergency or volunteer registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified paramedic or emergency medical technician, a member of a paid fire department, a member of the State Fire Commission, the State Fire Marshal, the State Fire Marshal’s assistants, the State Fire Administrator and voluntary rescue squad members may apply for a special license plate for any number of Class A vehicles titled in the name of the qualified applicant which bears the insignia of the profession, group or commission. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia in addition to the registration number issued to the applicant pursuant to the provisions of this article.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the fire chief or department head of the applicant stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application
fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.

(11) The division may issue specified certified firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of the State of West Virginia and who is a certified firefighter may apply for a special license plate which bears the insignia of the profession, for any number of Class A vehicles titled in the name of the qualified applicant. Any insignia shall be designed by the commissioner. License plates issued pursuant to this subdivision shall bear the requested insignia pursuant to the provisions of this article. Upon presentation of written evidence of certification as a certified firefighter, certified firefighters are eligible to purchase the special registration plate issued pursuant to this subdivision.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees. The firefighter certification department, section or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application
(12) The division may issue special scenic registration plates as follows:

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words “Wild Wonderful” as a slogan.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter.

(13) The division may issue honorably discharged Marine Corps league members special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged Marine Corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles.

(B) The division may charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the purpose of compensating the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.
fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged Marine Corps league license plate until the surviving spouse dies, remarries or does not renew the license plate.

(14) The division may issue military organization registration plates as follows:

(A) The division may issue a special registration plate for the members of any military organization chartered by the United States Congress upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the chartered organization in good standing, as determined by the governing body of the chartered organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of ten dollars for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s military organization registration plate until the surviving spouse dies, remarries or does not renew the special military organization registration plate.
(15) The division may issue special nongame wildlife registration plates and special wildlife registration plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the Director of the Division of Natural Resources.

(B) The division shall charge an annual fee of fifteen dollars for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the Division of Natural Resources.

(C) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(16) The division may issue members of the Silver Haired Legislature special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any person who is a duly qualified member of the Silver Haired Legislature a specialized registration plate which bears recognition of the applicant as a member of the Silver Haired Legislature.

(B) A qualified member of the Silver Haired Legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified
applicant. The division shall charge an annual fee of fifteen
dollars, in addition to all other fees required by this chapter, for
the plate. All annual fees collected by the division shall be
deposited in a special revolving fund to be used in the adminis-
tration of this chapter.

(17) Upon appropriate application, the commissioner shall
issue to a classic motor vehicle or classic motorcycle as defined
in section three-a, article ten of this chapter, a special registra-
tion plate designed by the commissioner. An annual fee of
fifteen dollars, in addition to all other fees required by this
chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special
registration plates for motorcycles subject to Class G registra-
tion as follows:

(A) Upon appropriate application, there shall be issued to
any honorably discharged veteran of any branch of the armed
services of the United States a special registration plate for any
number of motorcycles subject to Class G registration titled in
the name of the qualified applicant with an insignia designed by
the Commissioner of the Division of Motor Vehicles.

(B) A special initial application fee of ten dollars shall be
charged in addition to all other fees required by law. This
special fee is to compensate the Division of Motor Vehicles for
additional costs and services required in the issuing of the
special registration and shall be collected by the division and
deposited in a special revolving fund to be used for the
administration of this section: Provided, That nothing in this
section may be construed to exempt any veteran from any other
provision of this chapter.

(C) A surviving spouse may continue to use his or her
deaunched spouse’s honorably discharged veterans license plate
until the surviving spouse dies, remarries or does not renew the
license plate.
MOTOR VEHICLES

406 (19) Racing theme special registration plates:

407 (A) The division may issue a series of special registration plates displaying national association for stock car auto racing themes.

408 (B) An annual fee of twenty-five dollars shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited into a special revolving fund to be used in the administration of this chapter.

409 (C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

410 (20) The division may issue recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Bronze Star, Silver Star or Air Medal special registration plates as follows:

411 (A) Upon appropriate application, the division shall issue to any recipient of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the Commissioner of Motor Vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star or Bronze Star, as applicable.
(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse's Navy Cross, Distinguished Service Cross, Distinguished Flying Cross, Air Force Cross, Silver Star, Bronze Star or Air Medal special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(21) The division may issue honorably discharged veterans special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any honorably discharged veteran of any branch of the armed services of the United States with verifiable service during World War II, the Korean War, the Vietnam War, the Persian Gulf War or the War against Terrorism a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner denoting service in the applicable conflict.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing
469 contained in this section may be construed to exempt any
470 veteran from any other provision of this chapter.

471 (C) A surviving spouse may continue to use his or her
deceased spouse’s honorably discharged veterans registration
plate until the surviving spouse dies, remarries or does not
renew the special registration plate.

475 (22) The division may issue special volunteer firefighter
registration plates as follows:

477 (A) Any owner of a motor vehicle who is a resident of West
Virginia and who is a volunteer firefighter may apply for a
special license plate for any Class A vehicle titled in the name
of the qualified applicant which bears the insignia of the
profession in white letters on a red background. The insignia
shall be designed by the commissioner and shall contain a
fireman’s helmet insignia on the left side of the license plate.

484 (B) Each application submitted pursuant to this subdivision
shall be accompanied by an affidavit signed by the applicant’s
fire chief, stating that the applicant is a volunteer firefighter and
justified in having a registration plate with the requested
insignia. The applicant must comply with all other laws of this
state regarding registration and licensure of motor vehicles and
must pay all required fees.

491 (C) Each application submitted pursuant to this subdivision
shall be accompanied by payment of a special one-time initial
application fee of ten dollars, which is in addition to any other
registration or license fee required by this chapter. All applica-
tion fees shall be deposited into a special revolving fund to be
used in the administration of this chapter.

497 (23) The division may issue special registration plates
which reflect patriotic themes, including the display of any
United States symbol, icon, phrase or expression which evokes patriotic pride or recognition.

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the Commissioner of Motor Vehicles for distribution to applicants.

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(24) Special license plates bearing the American flag and the logo “9/11/01”.

(A) Upon appropriate application, the division shall issue special registration plates which shall display the American flag and the logo “9/11/01”.

(B) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(25) The division may issue a special registration plate celebrating the centennial of the 4-H youth development
movement and honoring the Future Farmers of America organization as follows:

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands and health as well as the symbol of the Future Farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special 4-H Future Farmers of America registration plate in addition to all other fees required by this chapter.

(26) The division may issue special registration plates to educators in the state’s elementary and secondary schools and in the state’s institutions of higher education as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) The division shall charge an annual fee of fifteen
dollars for each special educator registration plate in addition
to all other fees required by this chapter.

(27) The division may issue special registration plates to
members of the Nemesis Shrine as follows:

(A) Upon appropriate application, the division may issue a
special registration plate designed by the commissioner for any
number of vehicles titled in the name of the qualified applicant.
Persons desiring the special registration plate shall offer
sufficient proof of membership in Nemesis Shrine.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor
Vehicles for additional costs and services required in the
issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this
section, the time period for the Nemesis Shrine to comply with
the minimum one hundred prepaid applications is hereby
extended to the fifteenth day of January, two thousand five.

(28) The division may issue volunteers and employees of
the American Red Cross special registration plates as follows:

(A) Upon appropriate application, the division shall issue
to any person who is a duly qualified volunteer or employee of
the American Red Cross a specialized registration plate which
bears recognition of the applicant as a volunteer or employee of the American Red Cross for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received either the Combat Infantry Badge or the Combat Medic Badge as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof that they have received either the Combat Infantry Badge or the Combat Medic Badge.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(30) The division may issue special registration plates to members of the Knights of Columbus as follows:
(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Columbus.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Knights of Columbus to comply with the minimum one hundred prepaid applications is hereby extended to the fifteenth day of January, two thousand seven.

(31) The division may issue special registration plates to former members of the Legislature as follows:

(A) Upon appropriate application, the division shall issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of former service as an elected or appointed member of the West Virginia House of Delegates or the West Virginia Senate.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor
Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section. The design of the plate shall indicate total years of service in the Legislature.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(32) Democratic state or county executive committee member special registration plates:

(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of twenty-five dollars shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into a special revolving fund to be used in the administration of this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(D) The division shall not begin production of a plate authorized under the provisions of this subdivision until the division receives at least one hundred completed applications from the state or county executive committee members, including all fees required pursuant to this subdivision.
(E) Notwithstanding the provisions of subsection (d) of this section, the time period for the democratic executive committee to comply with the minimum one hundred prepaid applications is hereby extended to the fifteenth day of January, two thousand five.

(33) The division may issue honorably discharged female veterans special registration plates as follows:

(A) Upon appropriate application, there shall be issued to any female honorably discharged veteran, of any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as a woman veteran.

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his deceased spouse’s honorably discharged veterans license plate until the surviving spouse dies, remarries or does not renew the license plate.

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty State College to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled
in the name of the applicant. The special registration plates
shall be designed by the commissioner. Each application
submitted pursuant to this subdivision shall be accompanied by
payment of a special initial application fee of fifteen dollars,
which is in addition to any other registration or license fee
required by this chapter. The division shall charge an annual fee
of fifteen dollars for each special educator registration plate in
addition to all other fees required by this chapter. All special
fees shall be collected by the division and deposited into a
special revolving fund to be used for the purpose of compensat-
ing the Division of Motor Vehicles for additional costs and
services required in the issuing of the special registration and
for the administration of this section.

(35) The division may issue special registration plates to
members of the Harley Owners Group as follows:

(A) Upon appropriate application, the division may issue a
special registration plate designed by the commissioner for any
number of vehicles titled in the name of the qualified applicant.
Persons desiring the special registration plate shall offer
sufficient proof of membership in the Harley Owners Group.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor
Vehicles for additional costs and services required in the
issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for
persons retired from any branch of the armed services of the
United States as follows:
Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the Commissioner of the Division of Motor Vehicles to designate the recipient as retired from the armed services of the United States.

A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of a special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

A surviving spouse may continue to use his or her deceased spouse’s retired military license plate until the surviving spouse dies, remarries or does not renew the license plate.

The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for Fairmont State College as follows:

Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(38) The division may issue special registration plates
honoring the farmers of West Virginia as follows:

(A) Any owner of a motor vehicle who is a resident of West
Virginia may apply for a special license plate depicting a
farming scene or other apt reference to farming, whether in
pictures or words, at the discretion of the commissioner.

(B) The division shall charge a special initial application
fee of ten dollars. This special fee is to compensate the Division
of Motor Vehicles for additional costs and services required in
the issuing of the special registration and shall be collected by
the division and deposited in a special revolving fund to be used
for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates
promoting education as follows:

(A) Upon appropriate application, the division shall issue
a special registration plate displaying a children’s educa-
tion-related theme as prescribed and designated by the commis-
sioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor
Vehicles for additional costs and services required in the
issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section: Provided, That nothing in this
section exempts the applicant for a special registration plate
under this subdivision from any other provision of this chapter.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne
Division Association special registration plates as follows:

(A) The division may issue a special registration plate for
members of the 82nd Airborne Division Association upon
receipt of a guarantee from the organization of a minimum of
one hundred applicants. The insignia on the plate shall be
designed by the commissioner.

(B) Upon appropriate application, the division may issue
members of the 82nd Airborne Division Association in good
standing, as determined by the governing body of the organiza-
tion, a special registration plate for any number of vehicles
titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial
application fee of ten dollars for each special license plate in
addition to all other fees required by this chapter. All initial
application fees collected by the division shall be deposited into
a special revolving fund to be used in the administration of this
chapter: Provided, That nothing in this section may be con-
strued to exempt the applicant from any other provision of this
chapter.

(D) A surviving spouse may continue to use his or her
deceased spouse's special 82nd Airborne Division Association
registration plate until the surviving spouse dies, remarries or
does not renew the special registration plate.
(41) The division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency.

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police or the law-enforcement division of the Division of Natural Resources who has been wounded in the line of duty and awarded a purple heart in recognition thereof by the West Virginia Chiefs of Police Association, the West Virginia Sheriffs’ Association, the West Virginia Troopers Association or the Division of Natural Resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

(B) Registration plates issued pursuant to this subdivision are exempt from the registration fees otherwise required by the provisions of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s special registration plate until the surviving spouse dies, remarries or does not renew the plate.

(D) Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

(42) The division may issue a special registration plate for persons who are Native Americans and residents of this state.

(A) Upon appropriate application, the division shall issue to an applicant who is a Native American resident of West
Virginia a registration plate for a vehicle titled in the name of
the applicant with an insignia designed by the Commissioner of
the Division of Motor Vehicles to designate the recipient as a
Native American.

(B) The division shall charge a special one-time initial
application fee of ten dollars in addition to all other fees
required by law. This special fee is to compensate the Division
of Motor Vehicles for additional costs and services required in
the issuing of the special registration and shall be collected by
the division and deposited in a special revolving fund to be used
for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(43) The division may issue special registration plates
commemorating the centennial anniversary of the creation of
Davis and Elkins College as follows:

(A) Upon appropriate application, the division may issue a
special registration plate designed by the commissioner to
commemorate the centennial anniversary of Davis and Elkins
College for any number of vehicles titled in the name of the
applicant.

(B) The division shall charge a special initial application
fee of ten dollars. This special fee is to compensate the Division
of Motor Vehicles for additional costs and services required in
the issuing of the special registration and shall be collected by
the division and deposited in a special revolving fund to be used
for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(44) The division may issue special registration plates
recognizing and honoring breast cancer survivors.
(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and honor breast cancer survivors, such plate to incorporate somewhere in the design the “pink ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of ten dollars. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(45) The division may issue special registration plates to members of the Knights of Pythias or Pythian Sisters as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Knights of Pythias or Pythian Sisters.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.
(46) The commissioner may issue special registration plates for whitewater rafting enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special registration plate in addition to all other fees required by this chapter.

(47) The division may issue special registration plates to members of Lions International as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with Lions International for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in Lions International.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.
(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(48) The division may issue special registration plates supporting organ donation as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner which recognizes, supports and honors organ and tissue donors and includes the words “Donate Life”.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(49) The division may issue special registration plates to members of the West Virginia Bar Association as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the West Virginia Bar Association for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the West Virginia Bar Association.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the
issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(50) The division may issue special registration plates
bearing an appropriate logo, symbol or insignia combined with
the words “SHARE THE ROAD” designed to promote
bicycling in the state as follows:

(A) Upon appropriate application, the division may issue a
special registration plate designed by the commissioner for any
number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor
Vehicles for additional costs and services required in the
issuing of the special registration and shall be collected by the
division and deposited in a special revolving fund to be used for
the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for
each plate in addition to all other fees required by this chapter.

(51) The division may issue special registration plates
honoring coal miners as follows:

(A) Upon appropriate application, the division shall issue
a special registration plate depicting and displaying coal miners
in mining activities as prescribed and designated by the
commissioner and the board of the National Coal Heritage Area
Authority.

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(52) The division may issue special registration plates to present and former Boy Scouts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the Commissioner for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of present or past membership in the Boy Scouts as either a member or a leader.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(53) The division may issue special registration plates to present and former Boy Scouts who have achieved Eagle Scout status as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the Commissioner for any number of vehicles titled in the name of the qualified applicant.
Persons desiring the special registration plate shall offer sufficient proof of achievement of Eagle Scout status.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

The division may issue special registration plates recognizing and memorializing victims of domestic violence.

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner to recognize and memorialize victims of domestic violence, such plate to incorporate somewhere in the design the “purple ribbon emblem”, for any number of vehicles titled in the name of the applicant.

(B) The division shall charge a special initial application fee of ten dollars. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for the University of Charleston as follows:
(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(56) The division may issue special registration plates to members of the Sons of the American Revolution as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner in consultation with the Sons of the American Revolution for any number of vehicles titled in the name of the qualified applicant. Persons desiring the special registration plate shall offer sufficient proof of membership in the Sons of the American Revolution.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.
(57) The commissioner may issue special registration plates for horse enthusiasts as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special registration plate in addition to all other fees required by this chapter.

(58) The commissioner may issue special registration plates to the next of kin of a member of any branch of the armed services of the United States killed in combat as follows:

(A) Upon appropriate application, the division shall issue a special registration plate for any number of vehicles titled in the name of a qualified applicant depicting the Gold Star awarded by the United States Department of Defense as prescribed and designated by the commissioner.

(B) The next of kin shall provide sufficient proof of receiving a Gold Star lapel button from the United States Department of Defense in accordance with Public Law 534, 89th Congress, and criteria established by the United States Department of Defense, including criteria to determine next of kin.

(C) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the special license plates designated by this subdivision.

(59) The commissioner may issue special registration plates for retired or former Justices of the Supreme Court of Appeals of West Virginia as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the Division of Motor Vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special registration plate in addition to all other fees required by this chapter.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the special license plates designated by this subdivision.

(d) The minimum number of applications required prior to design and production of a special license plate shall be as follows:
1172 (1) The commissioner may not begin the design or
1173 production of any license plates for which eligibility is based on
1174 membership or affiliation with a particular private organization
1175 until at least one hundred persons complete an application and
1176 deposit with the organization a check to cover the first year’s
1177 basic registration, one-time design and manufacturing costs and
1178 to cover the first year additional annual fee. If the organization
1179 fails to submit the required number of applications with
1180 attached checks within six months of the effective date of the
1181 authorizing legislation, the plate will not be produced and will
1182 require legislative reauthorization: Provided, That an organiza-
1183 tion or group that is unsuccessful in obtaining the minimum
1184 number of applications may not request reconsideration of a
1185 special plate until at least two years have passed since the
1186 effective date of the original authorization.

1187 (2) The commissioner may not begin the design or
1188 production of any license plates authorized by this section for
1189 which membership or affiliation with a particular organization
1190 is not required until at least two hundred fifty registrants
1191 complete an application and deposit a fee with the division to
1192 cover the first year’s basic registration fee, one-time design and
1193 manufacturing fee and additional annual fee if applicable. If the
1194 commissioner fails to receive the required number of applica-
1195 tions within six months of the effective date of the authorizing
1196 legislation, the plate will not be produced and will require
1197 legislative reauthorization: Provided, That if the minimum
1198 number of applications is not satisfied within the six months of
1199 the effective date of the authorizing legislation, a person may
1200 not request reconsideration of a special plate until at least two
1201 years have passed since the effective date of the original
1202 authorization.

1203 (e)(1) Nothing in this section requires a charge for a free
1204 prisoner of war license plate or a free recipient of the Congres-
1205 sional Medal of Honor license plate for a vehicle titled in the
(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war license plate or Congressional Medal of Honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this chapter, in addition to all other fees required by this chapter, for the second special plate.

(f) The division may issue special ten-year registration plates as follows:

(1) The commissioner may issue or renew for a period of no more than ten years any registration plate exempted from registration fees pursuant to any provision of this code or any restricted use antique motor vehicle license plate authorized by section three-a, article ten of this chapter: Provided, That the provisions of this subsection do not apply to any person who has had a special registration suspended for failure to maintain motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or failure to pay personal property taxes as required by section three-a of this article.

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.
(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner. The commissioner shall, whenever possible and cost-effective, implement the latest technology in the design, production and issuance of registration plates, indices of registration renewal and vehicle ownership documents, including, but not limited to, offering internet renewal of vehicle registration and the use of bar codes for instant identification of vehicles by scanning equipment to promote the efficient and effective coordination and communication of data for improving highway safety, aiding law enforcement and enhancing revenue collection.

(i) Any license plate issued or renewed pursuant to this chapter which is paid for by a check that is returned for nonsufficient funds is void without further notice to the applicant. The applicant may not reinstate the registration until the returned check is paid by the applicant in cash, money order or certified check and all applicable fees assessed as a result thereof have been paid.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.
(a) Any motor vehicle designed to carry passengers, owned or leased by the State of West Virginia, or any of its departments, bureaus, commissions or institutions, except vehicles used by the Governor, Treasurer, three vehicles per elected office of the Board of Public Works, vehicles operated by the State Police, not to exceed five vehicles operated by the office of the Secretary of Military Affairs and Public Safety, not to exceed five vehicles operated by the Division of Homeland Security and Emergency Management, vehicles operated by conservation officers of the Division of Natural Resources, not to exceed ten vehicles operated by the arson investigators of the office of State Fire Marshal, not to exceed two vehicles operated by the Division of Protective Services and not to exceed sixteen vehicles operated by inspectors of the office of the Alcohol Beverage Control Commissioner, may not be operated or driven by any person unless it has displayed and attached to the front thereof, in the same manner as regular motor vehicle registration plates are attached, a plate of the same size as the regular registration plate, with white lettering on a green background bearing the words “West Virginia” in one line and the words “State Car” in another line and the lettering for the words “State Car” shall be of sufficient size to be plainly readable from a distance of one hundred feet during daylight.

The vehicle shall also have attached to the rear a plate bearing a number and any other words and figures as the Commissioner of Motor Vehicles shall prescribe. The rear plate shall also be green with the number in white.

(b) On registration plates issued to vehicles owned by counties, the color shall be white on red with the word “County” on top of the plate and the words “West Virginia” on the bottom. On any registration plates issued to a city or municipality, the color shall be white on blue with the word “City” on top and the words “West Virginia” on the bottom:
Provided, That after the thirty-first day of December, two thousand six, registration plates issued to a city or municipality law-enforcement department shall include blue lettering on a white background with the word “West Virginia” on top of the plate and shall be further designed by the commissioner to include a law enforcement shield together with other insignia or lettering sufficient to identify the motor vehicle as a municipal law enforcement department motor vehicle. The colors may not be reversed and shall be of reflectorized material. The registration plates issued to counties, municipalities and other governmental agencies authorized to receive colored plates hereunder shall be affixed to both the front and rear of the vehicles. Every municipality shall provide the commissioner with a list of law-enforcement vehicles operated by the law-enforcement department of the municipality, unless otherwise provided in this section, and a fee of ten dollars for each vehicle submitted by the first day of July, two thousand six.

(c) Registration plates issued to vehicles operated by county sheriffs shall be designed by the commissioner in cooperation with the sheriffs’ association with the word “Sheriff” on top of the plate and the words “West Virginia” on the bottom. The plate shall contain a gold shield representing the sheriff’s star and a number assigned to that plate by the commissioner. Every county sheriff shall provide the commissioner with a list of vehicles operated by the sheriff, unless otherwise provided in this section, and a fee of ten dollars for each vehicle submitted by the first day of July, two thousand two.

(d) The commissioner is authorized to designate the colors and design of any other registration plates that are issued without charge to any other agency in accordance with the motor vehicle laws.

(e) Upon application, the commissioner is authorized to issue a maximum of five Class A license plates per applicant to be used by county sheriffs and municipalities on
law-enforcement vehicles while engaged in undercover investigations.

(f) The commissioner is authorized to issue an unlimited number of license plates per applicant to authorized drug and violent crime task forces in the State of West Virginia when the chairperson of the control group of a drug and violent crime task force signs a written affidavit stating that the vehicle or vehicles for which the plates are being requested will be used only for official undercover work conducted by a drug and violent crime task force.

(g) The commissioner is authorized to issue twenty Class A license plates to the Criminal Investigation Division of the Department of Revenue for use by its investigators.

(h) The commissioner may issue a maximum of ten Class A license plates to the Division of Natural Resources for use by conservation officers. The commissioner shall designate the color and design of the registration plates to be displayed on the front and the rear of all other state-owned vehicles owned by the Division of Natural Resources and operated by conservation officers.

(i) The commissioner is authorized to issue an unlimited number of Class A license plates to the Commission on Special Investigations for state-owned vehicles used for official undercover work conducted by the Commission on Special Investigations. The commissioner is authorized to issue a maximum of two Class A plates to the Division of Protective Services for state-owned vehicles used by the Division of Protective Services in fulfilling its mission.

(j) No other registration plate may be issued for, or attached to, any state-owned vehicle.

(k) The Commissioner of Motor Vehicles shall have a sufficient number of both front and rear plates produced to
attach to all state-owned cars. The numbered registration plates for the vehicles shall start with the number “five hundred” and the commissioner shall issue consecutive numbers for all state-owned cars.

(1) It is the duty of each office, department, bureau, commission or institution furnished any vehicle to have plates as described herein affixed thereto prior to the operation of the vehicle by any official or employee.

(m) The commissioner may issue special registration plates for motor vehicles titled in the name of the Division of Public Transit or in the name of a public transit authority as defined in this subsection and operated by a public transit authority or a public transit provider to transport persons in the public interest. For purposes of this subsection, “public transit authority” means an urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income taxes under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large. The special registration plate shall be designed by the commissioner and shall display the words “public transit” For words or letters of similar effect to indicate the public purpose of the use of the vehicle. The special registration plate shall be issued without charge.

(n) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars. Magistrates shall have concurrent jurisdiction with circuit and criminal courts for the enforcement of this section.
AN ACT to amend and reenact §17A-6-6 and §17A-6-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6, §17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13 and §17A-6E-14, all relating generally to the regulation of selling new or used vehicles; providing for the comprehensive regulation and licensing of salespersons and finance and insurance representatives; setting forth specific licensure requirements; providing for revocation, suspension and refusal to renew licenses; authorizing fees; requiring dealers to notify the division upon the hiring and termination of salespersons; requiring display of list of licensees; authorizing the commissioner to propose legislative rules; prohibiting the employment by dealers of unlicensed salespersons; authorizing the commissioner to conduct investigations and petition for injunctions under certain circumstances; providing for investigations of violations; providing for appeals of decisions to suspend, revoke or deny licenses; and establishing special revenue fund.

Be it enacted by the Legislature of West Virginia:

That §17A-6-6 and §17A-6-18 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 §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6,
§17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13 and §17A-6E-14, all to read as follows:

Article

6. Licensing of Dealers and Wreckers or Dismantlers; Special Plates; Temporary Plates or Markers, Etc.

6E. Motor Vehicle Salesperson License.

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS, ETC.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

§17A-6-6. Refusal or issuance of license certificate; license certificate not transferable.

(a) Upon the review of the application and all other information before him or her, the commissioner may make and enter an order denying an application for a license certificate and refuse the license certificate sought. A denial and refusal are final and conclusive unless an appeal is made in accordance with the provisions of rules proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The commissioner shall make and enter an order denying or refusing a license, if the commissioner finds that the applicant (individually, if an individual, or the partners, if a copartnership, or the officers and directors, if a corporation):

(1) Has failed to furnish the required bond unless otherwise exempt under the provisions of section two-a of this article;

(2) Has failed to furnish the required certificate of insurance;
(3) Has knowingly made false statement of a material fact in his or her application;

(4) Has habitually defaulted on financial obligations in this state or any other state or jurisdiction;

(5) Has been convicted of a felony: Provided, That upon appeal, the Motor Vehicle Dealers Advisory Board established pursuant to the provisions of section eighteen-a of this article may grant an exemption of this restriction if the felony did not involve financial matters, the motor vehicle industry or matters of moral turpitude;

(6) So far as can be ascertained, has not complied with and will not comply with the registration and title laws of this state or any other state or jurisdiction;

(7) Does not or will not have or maintain at each place of business, subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer (an established place of business as defined for the business in question) in that section;

(8) Has been convicted of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler in this state or any other state or jurisdiction;

(9) Has done any act or has failed or refused to perform any duty for which the license certificate sought could be suspended or revoked were it then issued and outstanding;

(10) Is not age eighteen years or older;

(11) Is delinquent in the payment of any taxes owed to the United States, the State of West Virginia or any political subdivision of the state;
(12) Has been denied a license in another state or has been the subject of license revocation or suspension in another state;

(13) Has committed any action in another state which, if it had been committed in this state, would be grounds for denial and refusal of the application for a license certificate;

(14) Has failed to pay any civil penalty assessed by this state or any other state;

(15) Has failed to reimburse when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article; or

(16) Has failed to comply with the provisions of article six-e of this chapter, pertaining to the employment of licensed salespersons.

Otherwise, the commissioner shall issue to the applicant the appropriate license certificate which entitles the licensee to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer, or wrecker or dismantler, as the case may be.

(b) A license certificate issued in accordance with the provisions of this article is not transferable.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept confidential by the commissioner and the division, unless and until the commissioner suspends or revokes the
Provided, That the commissioner may advise the Motor Vehicle Dealers Advisory Board of pending actions and may disclose to the Motor Vehicle Dealers Advisory Board any information that enables it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements of this article, or any reasonable rules authorized in section nine, article two of this chapter and promulgated to implement the provisions of this article by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(2) Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business (subject to the qualification contained in subdivision (17),
subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in section one of this article;

(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or other person, in the conduct of the licensee’s business;

(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;

(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled;
(18) Has misrepresented a customer's credit or financial status to obtain financing;

(19) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article; or

(20) Has employed unlicensed salespersons in violation of article six-e of this chapter on or after the first day of January, two thousand eight.

(b) The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.

(c) Whenever a licensee fails to keep the bond, unless exempt from the requirement pursuant to section two-a of this article or liability insurance required by section four of this article, in full force and effect, or fails to provide evidence of the bond or liability insurance, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner and pays all reinstatement fees, the commissioner shall vacate the suspension.

(d) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate does not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is
96 processed, considered and passed upon, except that the
97 commissioner may give any previous suspension and the
98 revocation such weight in deciding whether to issue or refuse
99 the license certificate as is correct and proper under all of the
100 circumstances.

ARTICLE 6E. MOTOR VEHICLE SALESPERSON LICENSE.

§17A-6E-1. Findings and purpose.


§17A-6E-3. License required.

§17A-6E-4. Eligibility and issuance of license.

§17A-6E-5. Expiration of license, renewal and expired license.

§17A-6E-6. Change of employer.

§17A-6E-7. Change of address, lost or stolen license, duplicate license.


§17A-6E-9. Revocation, suspension or refusal to renew license.

§17A-6E-10. Administrative due process.


§17A-6E-12. Injunctive relief.


§17A-6E-1. Findings and purpose.

(a) It is the purpose of this article to protect retail motor
vehicle customers, motor vehicle dealers, banks and the state
from sustaining losses due to the fraudulent activity of persons
engaged in the business of selling vehicles.

(b) This article establishes minimum competency and
ethical standards for persons engaged in the business of selling
motor vehicles to the general public.


The following words as used in this article, unless the
context otherwise requires, have the following meanings:

(1) “Applicant” means any person making application for
an original or renewal of a salesperson license;
(2) “Dealer” means any motor vehicle or auction business regulated under the provisions of article six or six-c of this chapter;

(3) “Licensee” means any person holding a license issued under the provisions of this article;

(4) “Motor vehicle salesperson” or “salesperson” means any person employed by a dealer to sell, buy, display and offer for sale or deal in motor vehicles, recreational vehicles or trailers, as those terms are defined in section one of article one of this chapter, for a commission or other valuable consideration, but does not mean any public officer performing his or her official duties or the dealer licensee. A person employed by a dealer as a finance and insurance representative is for the purposes of this article a salesperson.

§17A-6E-3. License required.

(a) Except as provided in section six of this article, no person may engage in business in this state as a motor vehicle salesperson on and after the first day of January, two thousand eight, without holding a license issued under the provisions of this article.

(b) No class of vehicle dealer as defined in article six or six-c of this chapter may employ an unlicensed motor vehicle salesperson on or after the first day of January, two thousand eight. No person may sell vehicles for more than one vehicle dealer unless the commissioner grants a written waiver.

(c) Any person employed by licensed dealers as a salesperson immediately preceding the effective date of this section is exempt from the requirements of the background investigation and the written test and payment of the fee for the background investigation provided in section four of this article.
§17A-6E-4. Eligibility and issuance of license.

(a) The division may not issue any person a motor vehicle salesperson license unless the applicant:

(1) Is employed by a licensed West Virginia dealer who verifies the employment;

(2) Completes the application for a license on the form prescribed by the division, fully completed, signed and attested to by the applicant, including, but not limited to, the applicant’s:

(A) Full name;

(B) Social security number;

(C) Residence and mailing address;

(D) Name of employing dealership;

(E) Statement as to whether the applicant has ever had any previous application for a dealer or salesperson license refused in this or any other state or jurisdiction;

(F) Statement as to whether the applicant has been previously licensed as a salesperson in this state or any other state or jurisdiction;

(G) Statement as to whether the applicant has ever had his or her salesperson license or a dealer license suspended or revoked in this state or any other state or jurisdiction;

(H) Statement as to whether the applicant has ever held a dealer license which has been suspended or revoked or has been employed by a dealer which has had its license suspended or revoked;
(I) Statement as to whether the applicant has ever been convicted of a felony or whether the applicant individually or as an owner, partner, officer or director of a business entity has been convicted of, or pleaded guilty or nolo contendere to a criminal action, and if so, a written explanation of the conviction;

(J) Statement as to whether or not the applicant owes a child support obligation, owes a child support obligation that is more than six months in arrears, is the subject of a child support related warrant, subpoena or court order; and

(K) Statement that the applicant has not been found to have done any of the acts which would justify suspension or revocation of a salesperson’s license under section nine of this article;

(3) Submits verification of employment by the employing dealer;

(4) Furnishes a full set of fingerprints to facilitate a background check and other investigation considered necessary by the commissioner;

(5) Pays an initial nonrefundable application fee of seven dollars for each year the license is valid. Payment of the fee entitles the applicant to one attempt at a written test prescribed by the division. Successful completion of at least seventy percent of the written test is a passing score;

(6) Pays a nonrefundable background investigation fee of twenty-five dollars; and

(7) Is not the subject of a background investigation which reveals criminal convictions or other circumstances for which the commissioner may deny licensure under the provisions of this article.
55 (b) The division may, upon successful completion of all the
requirements contained in subsection (a) of this section, with
the exception of the background investigation, issue the
applicant a temporary motor vehicle salesperson license. The
temporary license is valid for a maximum of ninety days
pending issuance of the permanent license endorsement or
receipt of an unfavorable background investigation, whichever
occurs first.

63 (c) The division shall refuse to issue the license if the
applicant:

65 (1) Does not provide the necessary documents as deter-
mined by the division to establish his or her identity or legal
presence in this country;

68 (2) Has made any false statements of material fact in the
application;

70 (3) Has had his or her privilege to sell vehicles denied,
suspended or revoked by this state or any other state or
jurisdiction: Provided, That upon the applicant’s appeal, the
commissioner may grant an exemption of this restriction if the
applicant can show that he or she is eligible for reinstatement in
his or her previous jurisdiction of licensure;

76 (4) Has committed a fraudulent act or omission or repeat-
edly defaulted in financial obligations in connection with the
buying, selling, leasing, rental or otherwise dealing in motor
vehicles, recreational vehicles or trailers;

80 (5) Has been convicted of a felony: Provided, That upon the
applicant’s appeal the commissioner may grant an exemption
to this restriction if the felony did not involve financial matters
or the motor vehicle industry;
(6) Is not employed as a salesperson for a motor vehicle dealer licensed in accordance with article six or six-c of this chapter;

(7) Is acting as a salesperson for more than one motor vehicle dealer at the same time without a waiver issued by the commissioner; or

(8) Has a background investigation which reveals criminal convictions or other circumstances for which the commissioner may deny licensure under the provisions of this article.

(d) Willful misrepresentation of any fact in any application or any document in support of the application is a violation of this article.

§17A-6E-5. Expiration of license, renewal and expired license.

(a) An initial license issued under the provisions of this article shall be valid for no less than three years nor more than seven years as determined by the division to establish set license expiration date on the applicant’s birthday in a year in which the applicant’s age is evenly divisible by five.

(b) A licensee may renew a license in the manner prescribed by the division upon completion of the application for renewal, verification by the employing dealer and payment of a renewal fee of ten dollars. The license shall be valid for a period of five years.

(1) Any licensee who fails to renew his or her license before the date of expiration shall pay an additional fee of five dollars.

(2) Any licensee who fails to renew his or her license within six months of expiration is not eligible for renewal and is required to complete the application process required of all
new applicants, including the payment of all initial fees, completion of the written test and background investigation as if he or she never held a license.

§17A-6E-6. Change of employer.

(a) Within ten days of the termination of employment of a licensed salesperson, the dealer shall notify the division of the termination in the manner prescribed by the division. The license of the salesperson becomes inactive upon termination of employment by a licensed dealer, and the salesperson may not engage in the activities of a salesperson as described in section two of this article unless and until he or she becomes relicensed as a salesperson for the same dealer or another dealer.

(b) Within ten days of hiring a licensed salesperson, the dealer shall notify the division in the manner prescribed by the division. The dealer shall complete an application for transfer of a salesperson license, and shall verify the salesperson’s employment in a manner prescribed by the division.

(c) The salesperson shall submit the completed transfer application, a fee of five dollars and obtain a new salesperson license in the name of the new employer before engaging in the activities of a salesperson as described in section two of this article. No transfer application or fee is required if the salesperson is reemployed by the previous employer within six months of cessation of employment.

§17A-6E-7. Change of address, lost or stolen license, duplicate license.

A licensee shall notify the division in the manner prescribed by the division of a change of address of the licensee or the loss of a license, and obtain a new license within twenty days of loss. The division shall charge a fee of five dollars for issuing any duplicate license.

(a) Every licensee must have his or her license in his or her possession at all times when engaged in the business of selling vehicles, and shall display the license upon demand of any customer, law-enforcement official or division employee.

(b) Every dealer shall conspicuously display a list of all employees currently licensed as salespersons.

§17A-6E-9. Revocation, suspension or refusal to renew license.

(a) The commissioner may revoke or suspend the license of any licensee if he or she determines that the licensee has:

1. Violated any motor vehicle dealer law, any dealer rule or order of the division;

2. Improperly withheld, misappropriated or converted to his or her own use any money received from customers;

3. Misrepresented the terms of any existing or proposed vehicle sale, purchase, lease, rental, finance, warranty or insurance agreement;

4. Engaged in any pattern of unfair competition or unfair or deceptive acts or practices in the business of buying, selling, renting or leasing vehicles;

5. Forged another person’s name to any application or form required for the titling, leasing, rental, registration, financing or insuring of a vehicle;

6. Knowingly and willfully made or permitted a false or fraudulent application or form required for the titling, leasing, rental, registration, financing or insuring of a vehicle;

7. Been convicted of or pleaded nolo contendere to any felony: Provided, That upon the applicant’s appeal the commis-
(8) Been convicted of or pleaded nolo contendere to a misdemeanor in connection with his or her activities in the business of selling, renting or leasing vehicles;

(9) Been refused a dealer or salesperson license or had a dealer or salesperson license suspended, revoked, restricted or otherwise canceled in another state or jurisdiction: Provided, That upon the applicant’s appeal, the commissioner may grant an exemption of this restriction if the applicant can show that he or she is eligible for reinstatement in his or her previous jurisdiction of licensure; or

(10) Obtained the license through misrepresentation, fraud or any other act for which the issuance of the license could have been refused had it been known to the commissioner at the time of issuance.

(b) For the purposes of this section:

(1) “Suspension” means the privilege to sell vehicles is temporarily withdrawn for a fixed period and is reinstatable without retesting; and

(2) “Revocation” means the privilege to sell vehicles is withdrawn permanently.

(c) A licensee whose license is revoked may reapply for an original license with an explanation as to why the commissioner should consider the applicant for relicensing.

§17A-6E-10. Administrative due process.

(a) Any person may appeal an order of the commissioner suspending, revoking, denying or otherwise canceling his or her...
salesperson license in accordance with the prescribed procedures of the division.

(b) The commissioner may but is not required to stay the suspension or revocation of a salesperson license during the appeals process.

(c) Any final order entered pursuant to this article is subject to judicial review as provided in article five, chapter twenty-nine-a of this code.


(a) The commissioner may conduct any investigation necessary to determine whether any provision of this chapter has been violated or is about to be violated by a licensee or applicant.

(b) The commissioner and the division shall keep any investigation confidential unless and until the commissioner suspends, revokes or otherwise denies a license: Provided, That the commissioner may advise the Motor Vehicle Dealers Advisory Board of information that may enable it to perform its advisory functions.

§17A-6E-12. Injunctive relief.

(a) Whenever it appears to the commissioner that any person or licensee has violated any provision of this article or any final order of the commissioner, the commissioner may petition, in the name of the state, in the Circuit Court of Kanawha County or in the circuit court of the county in which the violation occurred, for an injunction against the person or licensee. Injunctive relief may be awarded in addition to any penalty imposed pursuant to the provisions of article eleven of this chapter or any other remedy allowed by law.
(b) The circuit court may, by mandatory or prohibitory
injunction, compel compliance with the provisions of this
article and all final orders of the commissioner. The court may
also issue temporary injunctions.

(c) The judgment by the circuit court is final unless
reversed, vacated or modified on appeal to the Supreme Court
of Appeals of West Virginia. An appeal shall be sought in the
manner and within the time provided by law for appeals from
circuit courts in other civil cases.


The commissioner may propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code, in order to effectuate the
provisions of this article.


All moneys collected pursuant to this article shall be
deposited in a special revenue account in the State Treasury to
be known as the “Motor Vehicle Salesperson License Fund.”
Expenditures from the fund shall be for the administration of
licensure of motor vehicle salespersons and are not authorized
from collections but are to be made only in accordance with
appropriation by the Legislature and in accordance with the
provisions of article three, chapter twelve of this code and upon
fulfillment of the provisions of article two, chapter eleven-b of
this code: Provided, That for the fiscal year ending the thirtieth
day of June, two thousand seven, expenditures are authorized
from collections rather than pursuant to appropriation by the
Legislature.
AN ACT to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended, relating to extending the weekend driving privileges of antique motor vehicles and motorcycles.

Be it enacted by the Legislature of West Virginia:

That §17A-10-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-3a. Special registration of antique motor vehicles and motorcycles; definition, registration and use of classic motor vehicles and classic motorcycles.

(a) The annual registration fee for any antique motor vehicle or motorcycle as defined in this section is two dollars.

“Antique motor vehicle” means any motor vehicle which is more than twenty-five years old and is owned solely as a collector’s item. “Antique motorcycle” means any motorcycle which is more than twenty-five years old and is owned solely as a collector’s item.

“Classic motor vehicle” means a motor vehicle which is more than twenty-five years old and is registered pursuant to
section three of this article and is used for general transporta-

tion.

“Classic motorcycle” means a motorcycle which is more
than twenty-five years old and is registered pursuant to section
three of this article and is used for general transportation.

(b) Except as otherwise provided in this section, antique
motor vehicles or motorcycles may not be used for general
transportation but may only be used for:

(1) Participation in club activities, exhibits, tours, parades
and similar events;

(2) The purpose of testing their operation, obtaining repairs
or maintenance and transportation to and from events as
described in subdivision (1); and

(3) Recreational purposes starting Fridays at four o’clock
in the evening through Sundays, and holidays: Provided, That
a classic motor vehicle or a classic motorcycle as defined in this
section may be registered under the applicable class at the
applicable registration fee set forth in section three of this
article and may be used for general transportation.

(c) A West Virginia motor vehicle or motorcycle displaying
license plates of the same year of issue as the model year of the
antique motor vehicle or motorcycle, as authorized in this
section, may be used for general transportation purposes if the
following conditions are met:

(1) The license plate’s physical condition has been
inspected and approved by the Division of Motor Vehicles;

(2) The license plate is registered to the specific motor
vehicle or motorcycle by the Division of Motor Vehicles;
(3) The owner of the motor vehicle or motorcycle annually registers the motor vehicle or motorcycle and pays an annual registration fee for the motor vehicle or motorcycle equal to that charged to obtain regular state license plates; and

(4) The motor vehicle or motorcycle passes an annual safety inspection; and

(5) The motor vehicle or motorcycle displays a sticker attached to the license plate, issued by the division, indicating that the motor vehicle or motorcycle may be used for general transportation.

(d) If more than one request is made for license plates having the same number, the division shall accept only the first application.

(e) The commissioner may promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code as may be necessary or convenient for the carrying out of the provisions of this section.

CHAPTER 162

(Com. Sub. for H. B. 4004 —By Delegates Swartzmiller, Ennis, Beach, Kominar, Ron Thompson, Talbott and Boggs)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-6-7a, relating to prohibiting the use of a traffic law photo-monitoring device by
police officers to detect traffic law violations; defining "traffic law photo-monitoring device"; providing that evidence obtained by the use of a traffic law photo-monitoring device may not be used to prove a violation of a traffic law; providing that this section does not prohibit the use of microwave devices to prove the speed of a motor vehicle in violation of a traffic law; and providing that evidence obtained by the use of a traffic law photo-monitoring device may be used for other lawful purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §17C-6-7a, to read as follows:

§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or prove traffic law violations.

(a) As used in this section "traffic law photo-monitoring device" means an electronic system consisting of a photographic, video, or electronic camera and a means of sensing the presence of a motor vehicle that automatically produces photographs, videotape, or digital images of the vehicle, its operator, or its license plate.

(b) No police officer may utilize a traffic law photo-monitoring device to determine compliance with, or to detect a violation of, a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles.

(c) A violation of a municipal or county ordinance or any provision of this code that governs or regulates the operation of motor vehicles may not be proved by evidence obtained by the use of a traffic law photo-monitoring device.

(d) The provisions of this section do not prohibit the use of any device designed to measure and indicate the speed of a
moving object by means of microwaves to obtain evidence to
prove the speed of a motor vehicle pursuant to section seven of
this article.

(e) The provisions of this section do not prohibit use of a
traffic law photo-monitoring device for any other lawful
purposes other than to obtain evidence to prove violations of
municipal or county ordinances or any provision of this code
governing or regulating the operation of motor vehicles.

CHAPTER 163

(H. B. 4437 — By Delegate Swartzmiller)

[Passed March 8, 2006; in effect ninety days from passage.] [Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to authorizing West Virginia Department of Agriculture emergency response vehicles to utilize red flashing warning lights.

Be it enacted by the Legislature of West Virginia:

That §17C-15-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.


(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps or flashing front-direction signals which projects a beam of light
of an intensity greater than three hundred candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

(b) No person shall drive or move any vehicle or equipment upon any highway with any lamp or device thereon displaying other than a white or amber light visible from directly in front of the center thereof except as authorized by subsection (d) of this section.

(c) Except as authorized in subsections (d) and (f) of this section and authorized in section nineteen of this article, flashing lights are prohibited on motor vehicles: Provided, That any vehicle as a means for indicating right or left turn, or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to ambulances; firefighting vehicles; hazardous material response vehicles; industrial fire brigade vehicles; school buses; West Virginia Department of Agriculture emergency response vehicles; Class A vehicles, as defined by section one, article ten, chapter seventeen-a of this code, of those firefighters who are authorized by their fire chiefs to have the lights; Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their
The use of red flashing warning lights shall be authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal’s office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal’s Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

(E) Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the State Fire Marshal’s office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class
A vehicles shall be designated by their chief official, the Department of Health and Human Resources and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence and the Department of Health and Human Resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(4) Yellow flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by section twenty-seven of this article;

(B) Postal service vehicles and rural mail carriers, as authorized in section nineteen of this article;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment; and
93  (H) School buses.

94  (5) The use of yellow flashing warning lights shall be authorized as follows:

96  (A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation and postal service vehicles shall be designated by the sheriff of the county of residence.

98  (B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

100 (C) Authorization for school buses shall be designated as set out in section twelve, article fourteen, chapter seventeen-c.

105 (e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or federal transit administration for the purpose of providing general public transportation, or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light three hundred sixty degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

119  (f) It shall be unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.
AN ACT to repeal §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-3-3 of said code; to amend and reenact §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code; to amend and reenact §17D-5-3 of said code; and to amend and reenact §17D-6-2 of said code, all relating to mandatory security upon motor vehicles; repealing the option of substituting the posting of a bond or other security with the State Treasurer or the Commissioner of Motor Vehicles in lieu of a motor vehicle liability policy; changing the method of random sampling for determining compliance with the requirement to maintain security; changing the period of suspension of a driver’s license for failure to maintain security; requiring the court to forward evidence of compliance to the Division of Motor Vehicles; providing a criminal penalty for providing false or fraudulent information related to mandatory security; requiring the division to suspend the driver’s license of any person upon a showing of forging or filing any false evidence or proof of mandatory security or information; and changing the requirements of obtaining a certificate of self insurance.

Be it enacted by the Legislature of West Virginia:

That §17D-4-15, §17D-4-16, §17D-4-17, §17D-4-18 and §17D-4-19 of the Code of West Virginia, 1931, as amended, be repealed; that
§17A-3-3 of said code be amended and reenacted; that §17D-2A-3, §17D-2A-6, §17D-2A-7 and §17D-2A-8 of said code be amended and reenacted; that §17D-5-3 of said code be amended and reenacted; and that §17D-6-2 of said code be amended and reenacted, all to read as follows:

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17D. Motor Vehicle Safety Responsibility Law.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

1 Every owner of a vehicle subject to registration under this article shall make application to the division for the registration of the vehicle upon the appropriate form or forms furnished by the division and every such application shall bear the signature of the owner or his or her authorized agent, written with pen and ink, and the application shall contain:

7 (a) The name, bona fide residence and mailing address of the owner, the county in which he or she resides or business address of the owner if a firm, association or corporation.

(b) A description of the vehicle including, insofar as the data specified in this section may exist with respect to a given vehicle, the make, model, type of body, the manufacturer's serial or identification number or other number as determined by the commissioner.
(c) In the event a motor vehicle is designed, constructed, converted or rebuilt for the transportation of property, the application shall include a statement of its declared gross weight if the motor vehicle is to be used alone, or if the motor vehicle is to be used in combination with other vehicles, the application for registration of the motor vehicle shall include a statement of the combined declared gross weight of the motor vehicle and the vehicles to be drawn by the motor vehicle; declared gross weight being the weight declared by the owner to be the actual combined weight of the vehicle or combination of vehicles and load when carrying the maximum load which the owner intends to place on the vehicle; and the application for registration of each vehicle shall also include a statement of the distance between the first and last axles of that vehicle or combination of vehicles.

The declared gross weight stated in the application shall not exceed the permissible gross weight for the axle spacing listed in the application as determined by the table of permissible gross weights contained in chapter seventeen-c of this code; and any vehicle registered for a declared gross weight as stated in the application is subject to the single-axle load limit set forth in said chapter.

(d) Each applicant shall state whether the vehicle is or is not to be used in the public transportation of passengers or property, or both, for compensation, and if used for compensation, or to be used, the applicants shall certify that the vehicle is used for compensation and shall, as a condition precedent to the registration of such vehicle, obtain a certificate of convenience or permit from the Public Service Commission unless otherwise exempt from this requirement in accordance with chapter twenty-four-a of this code.

(e) A statement under penalty of false swearing that liability insurance is in effect and will continue to be in effect
through the entire term of the vehicle registration period within limits which shall be no less than the requirement of section two, article four, chapter seventeen-d of this code, which shall contain the name of the applicant’s insurer, the name of the agent or agency which issued the policy and the effective date of the policy and such other information as may be required by the Commissioner of Motor Vehicles, or that the applicant has qualified as a self-insurer meeting the requirements of section two, article six of said chapter and that as a self-insurer he or she has complied with the minimum security requirements as established in section two, article four of said chapter.

(1) Intentional lapses of insurance coverage. —

(A) In the case of a periodic use or seasonal vehicle, as defined in section three, article two-a, chapter seventeen-d of this code, the owner may provide, in lieu of other statements required by this section, a statement, under penalty of false swearing, that liability insurance is in effect during the portion of the year the vehicle is in actual use, within limits which shall be no less than the requirements of section two, article four, chapter seventeen-d of this code, and other information relating to the seasonal use, on a form designed and provided by the division.

(B) Any registrant who prior to expiration of his or her vehicle registration drops or cancels insurance coverage for any reason other than periodic or seasonal use shall either surrender the registration plate or shall, by certified mail, notify the division of the cancellation. The notice shall contain a statement under penalty of false swearing that the vehicle will not be operated on the roads or highways of this state.

(C) The registration of any vehicle upon which insurance coverage has been dropped or canceled under subparagraph (B) of this paragraph shall be reinstated upon submission of current
proof of insurance and payment of the duplicate plate fee prescribed by this chapter.

(2) Verification process. —

The division may select any certificate of insurance, owner’s statement of insurance, motor vehicle registration or any other form or document for verification of insurance coverage with an insurance company.

(A) If the division verifies with an insurance company that a motor vehicle was operated in this state without the required security in effect based on information received on an accident report, citation, court report or any other evidence of motor vehicle operation, the division shall proceed against the owner and driver in accordance with section seven, article two-a, chapter seventeen-d of this code.

(B) If the division selects a motor vehicle registration for verification of insurance and determines that the owner of a registered motor vehicle did or does not have the required security in effect at the time of verification, the division shall proceed as follows:

(i) The division shall send a notice by certified mail to the registered owner’s address and to any lienholder noted on the certificate of title, advising that unless the owner provides verifiable proof that the vehicle was insured on the date of verification or that the vehicle is or was not required to be registered, the owner’s driver’s license will be suspended for thirty days for a first offense and ninety days for a second or subsequent offense and the motor vehicle registration will be revoked until current verifiable proof of insurance is provided to the division: Provided, That the division shall suspend the driver’s license of only one owner if a vehicle is registered in more than one name.
(ii) If, after the notice required in clause (i) of this subparagraph is given to the owner and the lienholder, the owner fails to provide proof of insurance, the driver’s license suspension and motor vehicle registration revocation shall go into effect without further notice thirty days from the date of the notice.

(iii) The division shall reinstate the driver’s license without regard to the suspension period in this paragraph and reinstate the motor vehicle registration upon submission of proof of current insurance coverage and payment of the reinstatement fees provided in section nine, article three, chapter seventeen-b of this code and section seven, article nine of this chapter.

(3) If any person making an application required under the provisions of this section, in the application knowingly provides false information, false proof of security or a false statement of insurance, or if any person, including an applicant’s insurance agent, knowingly counsels, advises, aids or abets another in providing false information, false proof of security, or a false statement of insurance in the application he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or be imprisoned in jail for a period not to exceed fifteen days, or both fined and imprisoned and, in addition to the fine or imprisonment, shall have his or her driver’s license suspended for a period of ninety days and vehicle registration revoked if applicable.

(f) Any further information as may reasonably be required by the division to enable it to determine whether the vehicle is lawfully entitled to registration.

(g) Each application for registration shall be accompanied by the fees provided in this article and an additional fee of fifty cents for each motor vehicle for which the applicant seeks registration, the fee to be deposited in a special revolving fund for the operation by the division of its functions established by the provisions of article two-a, chapter seventeen-d of this code.
(h) Revocation of a motor vehicle registration pursuant to this section shall not affect the perfection or priority of a lien or security interest attaching to the motor vehicle that is noted on the certificate of title to the motor vehicle.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

Article 2A. Security upon Motor Vehicles.

5. Violation of Provisions of Chapter; Penalties.


ARTICLE 2A. SECURITY UPON MOTOR VEHICLES.


§ 17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.

§ 17D-2A-7. Suspension or revocation of license, registration; reinstatement.


(a) Every owner or registrant of a motor vehicle required to be registered and licensed in this state shall maintain security as hereinafter provided in effect continuously throughout the registration or licensing period except in case of a periodic use or seasonal vehicle, in which case the owner or registrant is required to maintain security upon the vehicle only for the portion of the year the vehicle is in actual use. As used in this section, a periodic use or seasonal vehicle means a recreational vehicle, antique motor vehicle, motorcycle or other motor vehicle which is stored part of the year and used seasonally.

(b) Every nonresident owner or registrant of a motor vehicle, which is operated upon any road or highway of this state and which has been physically present within this state for more than thirty days during the preceding three hundred sixty-
five days shall thereafter maintain security as hereinafter provided in effect continuously throughout the period such motor vehicle remains within this state.

(c) No person shall knowingly drive or operate upon any road or highway in this state any motor vehicle upon which security is required by the provisions of this article unless such security is in effect.

(d) Such security shall be provided by one of the following methods:

(1) By an insurance policy delivered or issued for the delivery in this state by an insurance company authorized to issue vehicle liability and property insurance policies in this state within limits which shall be no less than the requirements of section two, article four of this chapter; or

(2) By qualification as a self-insurer under the provisions of section two, article six of this chapter.

(e) This article does not apply to any motor vehicle owned by the state or by a political subdivision of this state, nor to any motor vehicle owned by the federal government.

§17D-2A-6. Investigation by duly authorized law-enforcement officer to include inquiry regarding required security; notice by officer or court to Division of Motor Vehicles.

(a) At the time of investigation of a motor vehicle offense or accident in this state by the State Police or other law-enforcement agency or when a vehicle is stopped by a law-enforcement officer for reasonable cause, the officer of the agency making the investigation shall inquire of the operator of any motor vehicle involved as to the existence upon the vehicle or vehicles of the proof of insurance or other security required
by the provisions of this code and upon a finding by the law-enforcement agency, officer or agent thereof that the security required by the provisions of this article is not in effect, as to any vehicle, he or she shall notify the Division of Motor Vehicles of the finding within five days if no citation requiring a court appearance is issued: Provided, That the law-enforcement officer or agent may not stop vehicles solely to inquire as to the certificate of insurance.

(b) A defendant who is charged with a traffic offense that requires an appearance in court shall present the court at the time of his or her appearance or subsequent appearance with proof that the defendant had security at the time of the traffic offenses as required by this article.

(c) If, as a result of the defendant’s failure to show proof, the court determines that the defendant has violated this article, the court shall notify the Division of Motor Vehicles within five days. For purposes of this section, presentation of a certificate of insurance reflecting insurance to be in effect on the date in question shall constitute proof of surety.

§17D-2A-7. Suspension or revocation of license, registration; reinstatement.

(a) Any owner of a motor vehicle, subject to the provisions of this article, who fails to have the required security in effect at the time such vehicle is being operated upon the roads or highways of this state shall have his or her driver’s license suspended by the Commissioner of the Division of Motor Vehicles for a period of thirty days and shall have his or her motor vehicle registration revoked until such time as he or she shall present to the Division of Motor Vehicles the proof of security required by this article: Provided, That if a motor vehicle is registered in more than one name, the driver’s license of only one of the owners shall be suspended by the commissioner.
(b) Any person who knowingly operates a motor vehicle upon the roads or highways of this state which does not have the security required by the provisions of this article shall have his or her driver’s license suspended by the commissioner for a period of thirty days.

(c) A person’s driver’s license shall be suspended for a period of thirty days if the person is operating a motor vehicle designated for off-highway use upon the roads and highways of this state without the required security in effect, if the motor vehicle is not properly registered and licensed or if the required security was canceled.

(d) The commissioner may withdraw a suspension of a driver’s license provided that the commissioner is satisfied that there was not a violation of the provisions of required security related to operation of a motor vehicle upon the roads or highways of this state by such person. The commissioner may request additional information as needed in order to make such determination.

(e) No person shall have his or her driver’s license suspended or motor vehicle registration revoked under any provisions of this section unless he or she and any lienholder noted on the certificate of title shall first be given written notice of such suspension or revocation sent by certified mail, at least thirty days prior to the effective date of such suspension or revocation, and upon such person’s written request, sent by certified mail, he or she shall be afforded an opportunity for a hearing thereupon as well as a stay of the commissioner’s order of suspension or revocation and an opportunity for judicial review of such hearing. Upon affirmation of the commissioner’s order, the period of suspension or revocation shall commence to run.

(f) Such suspended driver’s license shall be reinstated following the period of suspension upon compliance with the
conditions set forth in this article and such revoked motor
vehicle registration shall be reissued only upon lawful compli-
ance with the provisions of this article.

(g) If the commissioner has previously suspended the
person's driver's license for any reason related to failure to
maintain insurance on a motor vehicle within the previous five
years, the period of suspension shall be for a period of ninety
days.

(h) Revocation of a motor vehicle registration pursuant to
this section shall not affect the perfection or priority of a lien or
security interest attaching to the motor vehicle that is noted on
the certificate of title to the motor vehicle.


The Commissioner of the Division of Motor Vehicles is
hereby authorized to promulgate rules, in accordance with
chapter twenty-nine-a of this code, for the administration,
operation and enforcement of the provisions of this article.

ARTICLE 5. VIOLATION OF PROVISIONS OF CHAPTER; PENALTIES.

§17D-5-3. Forgery; suspension of license or registration; penalty
for violations of chapter.

(a) Any person who forges or, without authority, signs any
evidence or proof of insurance, who files or offers for filing any
such evidence of proof knowing or having reason to believe that
it is forged or signed without authority or who provides false or
fraudulent information is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than one thousand
dollars or imprisoned in jail for not more than one year, or both.

(b) Any person who violates any provision of this chapter
for which no penalty is otherwise provided is guilty of a
misdemeanor and, upon conviction thereof, shall be fined not
(c) The commissioner shall suspend the person’s driver’s license for a period of ninety days and shall revoke the motor vehicle registration upon receipt of a conviction under subsection (a) of this section: Provided, That the motor vehicle registration may be reinstated upon current proof of the security required by this chapter.

(d) If the commissioner determines that any person has provided false or fraudulent insurance information on any application, form or document to the division or has provided a fraudulently altered or forged evidence or proof of insurance to the division, the division shall suspend the person’s driver’s license for ninety days and revoke the motor vehicle registration until genuine proof of insurance is provided to the division.

(e) The person shall be afforded due process in accordance with the provisions of section seven, article two-a of this chapter.

ARTICLE 6. GENERAL PROVISIONS.

§17D-6-2. Self-insurers.

(a) Any person in whose name more than twenty-five vehicles are registered may qualify as a self-insurer by annually obtaining a certificate of self-insurance issued by the commissioner as provided in subsection (b) of this section.

(b) The commissioner may, in his or her discretion, upon the application of such a person, issue a certificate of self-insurance when he or she is satisfied that such person is possessed and will continue to be possessed of ability to pay judgments obtained against such person. The commissioner may not issue a certificate of self-insurance unless the applicant is listed as the registered owner of the motor vehicles and the
applicant files an itemized financial statement that reflects a minimum of one million dollars in total assets. The listed assets must be wholly owned by the applicant.

(c) A self-insured applicant, under the provisions of this section, shall notify the commissioner upon his or her filing of a petition for bankruptcy and shall comply with the provisions of section ten, article four, chapter seventeen-a of this code related to the issuance of salvage certificates and the determination of a vehicle as a total loss.

(d) Upon not less than five days’ notice and a hearing pursuant to the notice, the commissioner may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay any judgment within thirty days after such judgment shall have become final, shall constitute a reasonable ground for the cancellation of a certificate of self-insurance.

CHAPTER 165

(Com. Sub. for S. B. 51 — By Senators Kessler and Hunter)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §48-25-101 of the Code of West Virginia, 1931, as amended, relating to refining procedures for name change; permitting persons to file for a name change who were born in, married in and previously were residents in the county for at least fifteen years where the petition is brought; setting forth requirements for the verified petition; and providing that a second notice and publication are not required in the event of a rescheduled hearing.
Be it enacted by the Legislature of West Virginia:

That §48-25-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court or family court for change of name; contents thereof; notice of application.

(a) Any person desiring a change of his or her own name, or that of his or her child or ward, may apply therefor to the circuit court or family court of the county in which he or she resides by a verified petition setting forth and affirming the following:

1. That he or she has been a bona fide resident of the county for at least one year prior to the filing of the petition;

2. The cause for which the change of name is sought;

3. The new name desired;

4. The name change is not for purposes of avoiding debt or creditors;

5. The petitioner seeking said name change is not a registered sex offender pursuant to any state or federal law;

6. The name change sought is not for purposes of avoiding any state or federal law regarding identity;

7. The name change sought is not for any improper or illegal purpose; and

8. The petitioner is not a convicted felon in any jurisdiction.
20 (b) Notwithstanding the provisions of subsection (a) of this
21 section, a nonresident of the county may apply for a change of
22 name if the person was born in the county, was married in the
23 county and was previously a resident of the county for a period
24 of at least fifteen years.

25 (c) Previous to the filing of the petition, the person shall
26 cause a notice of the time and place that the application will be
27 made to be published as a Class I legal advertisement in
28 compliance with the provisions of article three, chapter
29 fifty-nine of this code. The publication area for the publication
30 is the county: Provided, That the publication shall contain a
31 provision that the hearing may be rescheduled without further
32 notice or publication.

CHAPTER 166

(H. B. 4386 — By Delegate Morgan)

[Passed March 10, 2006, in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §15-2-24a, relating to
ratifying the National Crime Prevention and Privacy Compact.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2-24a, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

The Legislature of West Virginia approves and ratifies the National Crime Prevention and Privacy Compact, 42 U.S.C. §14616, as it existed on the first day of January, two thousand six, and the compact shall remain in effect in this state until the Legislature renounces the compact by statute. The Superintendent of the West Virginia State Police shall execute, administer, and implement the compact on behalf of the state, and may adopt necessary rules, regulations, and procedures for the national exchange of criminal history records for noncriminal records purposes. Ratification of the compact does not affect the obligations and responsibilities of the State Police criminal records section regarding the dissemination of criminal history records within West Virginia.

CHAPTER 167

(Com. Sub. for H. B. 4486 — By Mr. Speaker, Mr. Kiss, and Delegates Stemple, Cann, Kominar, Stalnaker, Amores, Michael, Campbell, Perry, Hartman and Browning)

[Passed March 11, 2006; in effect July 1, 2006.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §15-1B-16 of the Code of West Virginia, 1931, as amended, relating to the National Guard generally; and increasing the base pay of members of the National Guard while in active service to the state.

Be it enacted by the Legislature of West Virginia:

That §15-1B-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1B. NATIONAL GUARD.

§15-1B-16. Pay and allowances.

(a) Pay and allowances for officers and enlisted personnel of the National Guard for drill, encampment or other duty for training prescribed or ordered by the federal government shall be such as are provided by the laws of the United States.

(b) Officers and enlisted personnel of the National Guard in active service of the state shall receive the same pay and allowances, in accordance with their rank and service, as are prescribed for the armed forces of the United States: Provided, That no member of the National Guard shall receive base pay of less than one hundred dollars per day while he or she is in active service of the state.

(c) Notwithstanding any of the provisions of this article, members of the National Guard may, with their consent, perform without pay, or without pay and allowances, any duties prescribed by section thirteen of this article pursuant to competent orders therefor: Provided, That necessary expenses may be furnished such personnel within the discretion of the Adjutant General.
outside of the state; penalties; and allowing residents and nonresidents to take legally killed, taken or captured game out of the state.

Be it enacted by the Legislature of West Virginia:

That §20-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-12. Transportation of wildlife out of state; penalties.

(a) A person may not transport or have in his or her possession with the intention of transporting beyond the limits of the state any species of wildlife or any part thereof killed, taken, captured or caught within this state, except as provided for in this section.

(b) A person legally entitled to hunt and fish in this state may take with him or her personally, when leaving the state, any wildlife that he or she has lawfully taken or killed, not exceeding, during the open season, the number that any person may lawfully possess.

(c) This section does not apply to persons legally entitled to propagate and sell wild animals, wild birds, fish, amphibians and other forms of aquatic life.

(d) Licensed resident hunters and trappers and resident and nonresident fur dealers may transport beyond the limits of the state pelts of game and fur-bearing animals taken during the legal season.

(e) The hide, head, antlers and feet of a legally killed deer and the hide, head, skull, organs and feet of a legally killed black bear may also be transported beyond the limits of the state.
(f) The director shall have authority to promulgate rules in accordance with chapter twenty-nine-a of this code dealing with the transportation and tagging of wildlife and the skins.

(g) A person violating the provisions of this section by transporting or possessing with the intention of transporting beyond the limits of this state deer or wild boar shall be deemed to have committed a separate offense for each animal so transported or possessed.

(h) A person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than twenty dollars nor more than three hundred dollars and be imprisoned in jail not less than ten nor more than sixty days.

CHAPTER 169

(H. B. 4445 — By Mr. Speaker, Mr. Kiss, and Delegates Cann, Stemple, Pethtel, Swartzmiller and H. White)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §20-3-11 of the Code of West Virginia, 1931, as amended, relating to permitting the Director of the Division of Forestry to recover costs incurred in fighting fires.

Be it enacted by the Legislature of West Virginia:

That §20-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-11. Recovery of costs incurred in fighting fires; landowners responsibility to extinguish fires.

The Director of the Division of Forestry shall, in the name of the state, recover from the person or persons, firms or corporations whose negligence or whose violation of any provision of this article caused any fire at any time on grass or forest land, the amount expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire, and the costs associated therewith, including payment for the personal services rendered by full-time State Division of Forestry employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire. Such recovery shall not bar an action for damages by any other person.

Any such fire which was caused by a trespasser or by a person who was upon the property without the consent of the owner shall not be deemed caused by the negligence of the owner; but the owner shall use all practical means to confine, extinguish or suppress any such fire on his land even though it was caused by any such person. If he fails to do so, after becoming aware of such fire, the Director of the Division of Forestry shall, in the name of the state, recover from him amounts expended by the state for the personal services of persons especially employed under the provisions of section four of this article to control, confine, extinguish or suppress such fire and the costs associated therewith, including payment for the personal services rendered by full-time State Division of Forestry employees, operating costs of state equipment used and costs related thereto in controlling, confining, extinguishing or suppressing such fire.
Any time that a landowner, his or her agent or employee is aware of a fire on the landowner’s property, the landowner shall use all practical means to confine, extinguish or suppress the fire.

CHAPTER 170

(Com. Sub. for H. B. 4453 — By Delegates Stemple, Poling, Varner and Pethtel)

[Passed March 10, 2006; in effect from ninety days from passage.]  
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §20-7-4 of the Code of West Virginia, 1931, as amended, relating to law-enforcement powers and duties of conservation officers; providing for the state-wide authority of conservation officers to enforce litter control laws; providing for conservation officer’s authority to initiate complaint for violations of laws related to wildlife, forests and natural resources; and relating to the procurement and execution of related arrest and search warrants.

Be it enacted by the Legislature of West Virginia:

That §20-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-4. Powers and duties of conservation officers.

(a) Conservation officers and other persons authorized to enforce the provisions of this chapter are under the supervision and direction of the director in the performance of their duties.
(b) Conservation officers have statewide jurisdiction and have authority to:

(1) Arrest on sight, without warrant or other court process, any person or persons committing a criminal offense in violation of the laws of this state, in the presence of the officer, but no arrest may be made where any form of administrative procedure is prescribed by this chapter for the enforcement of the provisions of this chapter;

(2) Carry such arms and weapons as may be prescribed by the director in the course and performance of their duties, but no license or other authorization shall be required for this privilege;

(3) Search and examine, in the manner provided by law, any boat, vehicle, automobile, conveyance, express or railroad car, fish box, fish bucket or creel, game bag or game coat or other place in which hunting and fishing paraphernalia, wild animals, wild birds, fish, amphibians or other forms of aquatic life could be concealed, packed or conveyed whenever they have reason to believe that they would thereby secure or discover evidence of the violation of the provisions of this chapter;

(4) Execute and serve a search warrant, notice or other process of law issued under the authority of this chapter or other law relating to wildlife, forests, and all other natural resources, by a magistrate or court having jurisdiction in the same manner, with the same authority and with the same legal effect as a sheriff;

(5) Require the operator of any motor vehicle or other conveyance on or about the public highways or roadways, or in or near the fields and streams of this state, to stop for the purpose of allowing the conservation officers to conduct game-kill surveys;
(6) Summon aid in making arrests or seizures or in executing warrants, notices or processes, in the same manner as sheriffs;

(7) Enter private lands or waters within the state while engaged in the performance of their official duties;

(8) Arrest on sight, without warrant or other court process, subject to the limitations set forth in subdivision (1) of this section, any person or persons committing a criminal offense in violation of any law of this state in the presence of the officer on any state-owned lands and waters and lands and waters under lease by the Division of Natural Resources and all national forest lands, waters and parks and U.S. Corps of Army Engineers’ properties within the boundaries of the State of West Virginia and, in addition to the authority conferred in other subdivisions of this section, execute all arrest warrants on these state and national lands, waters and parks and U.S. Corps of Army Engineers’ properties, consistent with the provisions of article one, chapter sixty-two of this code;

(9) Arrest any person who enters upon the land or premises of another without written permission from the owner of the land or premises in order to cut, damage or carry away, or cause to be cut, damaged or carried away, any timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant. Any person convicted of cutting, damaging or carrying away or causing to be cut, damaged or carried away any timber, trees, logs, posts, fruits, nuts, growing plants or products of growing plants is liable to the owner in the amount of three times the value of the timber, trees, logs, posts, fruit, nuts, growing plants or products of any growing plant, in addition to and notwithstanding any other penalties by law provided by section thirteen, article three, chapter sixty-one of this code;

(10) Make a complaint in writing before any court or officer having jurisdiction, and procure and execute the warrant,
when the officer knows or has reason to believe that a person has violated a law of this state. The actions of the conservation officer have the same force and effect as if made by a sheriff;

(11) Serve and execute warrants for the arrest of any person and warrants for the search of any premises, buildings, properties or conveyances issued by a properly constituted authority in the same manner, with the same authority, and with the same legal effect, as a sheriff; and

(12) Do all things necessary to carry into effect the provisions of this chapter.

CHAPTER 171

(H. B. 4622 — By Delegates Swartzmiller, Anderson, Stemple and Ashley)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §22-6-26 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-6 and §22-21-8 of said code, all relating to oil and gas well and methane gas well performance bonds; reducing bond amounts; and increasing certain permit fees.

Be it enacted by the Legislature of West Virginia:

That §22-6-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-6 and §22-21-8 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.

21. Coalbed Methane Wells and Units.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-26. Performance bonds; corporate surety or other security.

(a) No permit shall be issued pursuant to this article unless a bond as described in subsection (d) of this section which is required for a particular activity by this article is or has been furnished as provided in this section.

(b) A separate bond as described in subsection (d) of this section may be furnished for a particular oil or gas well, or for a particular well for the introduction of liquids for the purposes provided in section twenty-five of this article. A separate bond as described in subsection (d) of this section shall be furnished for each well drilled or converted for the introduction of liquids for the disposal of pollutants or the effluent therefrom. Each of these bonds shall be in the sum of five thousand dollars, payable to the State of West Virginia, conditioned on full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing and stimulating of oil and gas wells (or, if applicable, with all laws, rules relating to drilling or converting wells for the introduction of liquids for the purposes provided in section twenty-five of this article or for the introduction of liquids for the disposal of pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells and for furnishing such reports and information as may be required by the director.

(c) When an operator makes or has made application for permits to drill or stimulate a number of oil and gas wells or to drill or convert a number of wells for the introduction of liquids
for the purposes provided in section twenty-five of this article,
the operator may in lieu of furnishing a separate bond furnish
a blanket bond in the sum of fifty thousand dollars, payable to
the State of West Virginia, and conditioned as aforesaid in
subsection (b) of this section.

(d) The form of the bond required by this article shall be
approved by the director and may include, at the option of the
operator, surety bonding, collateral bonding (including cash and
securities) letters of credit, 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 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 division.
The cash deposit or market value of such securities or certifi-
cates shall be equal to or greater than the amount of the bond.
The director shall, upon receipt of any such deposit of cash,
securities or certificates, promptly place the same with the
Treasurer of the State of West Virginia whose duty it shall be
to receive and hold the same in the name of the state in trust for
the purpose of which the deposit is made when the permit is
issued. The operator shall be entitled to all interest and income
earned on the collateral securities filed by such operator. The
operator making the deposit shall be entitled from time to time
to receive from the State Treasurer, upon the written approval
of the director, the whole or any portion of any cash, securities
or certificates so deposited, upon depositing with the Treasurer
in lieu thereof, cash or other securities or certificates of the
classes herein specified having value equal to or greater than
the amount of the bond.
(e) When an operator has furnished a separate bond from a corporate bonding or surety company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both, its operator may deposit with the director cash from the sale of the oil or gas or both until the total deposited is five thousand dollars. When the sum of the cash deposited is five thousand dollars, the separate bond for the well shall be released by the director. Upon receipt of such cash, the director shall immediately deliver the same to the Treasurer of the State of West Virginia. The Treasurer shall hold such cash in the name of the state in trust for the purpose for which the bond was furnished and the deposit was made. The operator shall be entitled to all interest and income which may be earned on the cash deposited so long as the operator is in full compliance with all laws, rules relating to the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for which the cash was deposited and so long as the operator has furnished all reports and information as may be required by the director. If the cash realized from the sale of oil or gas or both from the well is not sufficient for the operator to deposit with the director the sum of ten thousand dollars within one year of the day the well started producing, the corporate or surety company which issued the bond on the well may notify the operator and the director of its intent to terminate its liability under its bond. The operator then shall have thirty days to furnish a new bond from a corporate bonding or surety company or collateral securities or other forms of security, as provided in the next preceding paragraph of this section with the director. If a new bond or collateral securities or other forms of security are furnished by the operator, the liability of the corporate bonding or surety company under the original bond shall terminate as to any acts and operations of the operator occurring after the effective date of the new bond or the date the collateral securities or other forms of security are accepted by the Treasurer of the State of West Virginia. If the operator does not furnish a new bond or collateral securities or
other forms of security, as provided in the next preceding paragraph of this section, with the director, the operator shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law and rules applicable thereto. In such case, the corporate or surety company which issued the original bond shall be liable for any plugging, filling or reclamation not performed in accordance with such laws and rules.

(f) Any separate bond furnished for a particular well prior to the effective date of this chapter shall continue to be valid for all work on the well permitting prior to the eleventh day of July, one thousand nine hundred eighty-five; but no permit shall hereafter be issued on such a particular well without a bond complying with the provisions of this section. Any blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five shall be replaced with a new blanket bond conforming to the requirements of this section, at which time the prior bond shall be discharged by operation of law; and if the director determines that any operator has not furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond within sixty days after receipt of the notice from the director shall work a forfeiture under subsection (i) of this section of the blanket bond furnished prior to the eleventh day of July, one thousand nine hundred eighty-five.

(g) Any such bond shall remain in force until released by the director and the director shall release the same upon satisfaction that the conditions thereof have been fully performed. Upon the release of any such bond, any cash or collateral securities deposited shall be returned by the director to the operator who deposited same.

(h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor or transferor shall notify the
department of the name and address of the assignee or transferee by certified mail, return receipt requested, not later than five days after the date of the assignment or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the obligations and liabilities unless and until the assignee or transferee files with the department the well name and the permit number of the subject well, the county and district in which the subject well is located, the names and addresses of the assignor or transferor, and assignee or transferee, a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash, collateral security or other forms of security, described in section twelve, fourteen, twenty-three or twenty-six of this article, and the name and address of the assignee’s or transferee’s designated agent if assignee or transferee would be required to designate such an agent under section six of this article, if assignee or transferee were an applicant for a permit under said section six. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the department of such termination and designate a new agent.

Upon compliance with the requirements of this section by assignor or transferor and assignee or transferee, the director shall release assignor or transferor from all duties and requirements of this article, and the deputy director shall give written notice of release unto assignor or transferor of any bond and return unto assignor or transferor any cash or collateral securities deposited pursuant to section twelve, fourteen, twenty-three or twenty-six of this article.

(i) If any of the requirements of this article or rules promulgated pursuant thereto or the orders of the director have not been complied with within the time limit set by the violation notice as defined in sections three, four and five of this article, the performance bond shall then be forfeited.
(j) When any bond is forfeited pursuant to the provisions of this article or rules promulgated pursuant thereto, the director shall give notice to the Attorney General who shall collect the forfeiture without delay.

(k) All forfeitures shall be deposited in the Treasury of the State of West Virginia in the special reclamation fund as defined in section twenty-nine of this article.

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

§22-21-8. Performance bonds; corporate surety or other security.

§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 completed 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
ccoal 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;

(10) 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 six hundred fifty 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 regis-
tered 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, the proposed date for completion of drilling, the proposed date for any stimulation of the well, and if horizontal drilling of a well commenced on the surface is proposed, the vertical and horizontal alignment and extent of the well;

(6) A certificate by the applicant that the notice requirements 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 requirements 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 Water Pollution Control Act Amendments of 1972 [33 U.S.C. 1288]. 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 imprisoned in the county jail not more than twelve months, or both fined and imprisoned.

§22-21-8. Performance bonds; corporate surety or other security.
(a) No permit shall be issued pursuant to this article unless a bond is or has been furnished as provided in this section.

(b) A separate bond may be furnished for a particular coalbed methane well in the sum of five thousand dollars, payable to the State of West Virginia, conditioned on full compliance with all laws and rules relating to the drilling, operation and stimulation of such wells, to the plugging, abandonment and reclamation thereof, and for furnishing such reports and information as may be required by the chief.

(c) When an operator makes or has made application for permits to drill, operate or stimulate more than one coalbed methane well or a combination of coalbed methane wells and wells regulated under article one, chapter twenty-two-b of this code, the operator may in lieu of furnishing a separate bond furnish a blanket bond in the sum of fifty thousand dollars, payable to the State of West Virginia, and conditioned as stated in subsection (b) of this section.

(d) All bonds submitted hereunder shall have a corporate bonding or surety company authorized to do business in the State of West Virginia as surety thereon, or in lieu of a corporate surety, the operator may elect to deposit with the chief cash, collateral securities or any combination thereof as provided in subsection (d), section twenty-six, article six of this chapter.

(e) For purposes of bonding requirements, a coalbed methane well shall be treated as a well, as defined and regulated in article one, chapter twenty-two-b of this code, and the provisions of subsections (e), (g), (h), (i) and (j) of section twenty-six thereof shall apply.
AN ACT to amend and reenact §20-5-2 of the Code of West Virginia, 1931, as amended, relating to the state parks and recreation system; providing that interest on investment of parks’ operational revenue is to be used exclusively for the benefit of the state parks and public recreation system; allowing certain designated parks to raise the minimum bank deposit from two hundred fifty dollars to five hundred dollars; and providing the Natural Resources Commission authority to promulgate rules to permit and regulate the hunting of white-tailed deer in state parks.

Be it enacted by the Legislature of West Virginia:

That §20-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

(a) The Director of the Division of Natural Resources is responsible for the execution and administration of the provisions in this article as an integral part of the parks and recreation program of the state and shall organize and staff the section of parks and recreation for the orderly, efficient and
economical accomplishment of these ends. The authority granted in the year one thousand nine hundred ninety-four to the Director of the Division of Natural Resources to employ up to six additional unclassified personnel to carry out the parks’ functions of the Division of Natural Resources is continued.

(b) The Director of the Division of Natural Resources shall:

(1) Establish, manage and maintain the state’s parks and recreation system for the benefit of the people of this state and do all things necessary and incidental to the development and administration of the state’s parks and recreation system;

(2) Acquire property for the state in the name of the Division of Natural Resources by purchase, lease or agreement; retain, employ and contract with legal advisors and consultants; or accept or reject for the state, in the name of the division, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in the property, including lands and waters, for state park or recreational areas for the purpose of providing public recreation: Provided, That the provisions of section twenty, article one of this chapter are specifically made applicable to any acquisitions of land: Provided, however, That any sale, exchange or transfer of property for the purposes of completing land acquisitions or providing improved recreational opportunities to the citizens of the state is subject to the procedures of article one-a of this chapter: Provided further, That no sale of any park or recreational area property, including lands and waters, used for purposes of providing public recreation on the effective date of this article and no privatization of any park may occur without statutory authority;

(3) Approve and direct the use of all revenue derived from the operation of the state parks and public recreation system for the operation, maintenance and improvement of the system,
individual projects of the system or for the retirement of park development revenue bonds: Provided, That all revenues derived from the operation of the state parks and public recreation system shall be invested by the Treasurer and all proceeds from investment earnings shall accrue for the exclusive use for the operation, maintenance, and improvement of the system, individual projects of the system or for the retirement of park development revenue bonds;

(4) Effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources by approving the use of no less than twenty percent of the:

(A) Funds appropriated for purposes of advertising and marketing expenses related to the promotion and development of tourism, pursuant to subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code; and

(B) Funds authorized for expenditure from the Tourism Promotion Fund for purposes of direct advertising, pursuant to section twelve, article two, chapter five-b of this code and section ten, article twenty-two-a, chapter twenty-nine of this code;

(5) Issue park development revenue bonds as provided in this article;

(6) Provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational service facilities, subject to the provisions of section fifteen of this article and section twenty, article one of this chapter;

(7) The director may sell timber that has been severed in a state park incidental to the construction of park facilities or related infrastructure where the construction is authorized by the Legislature in accordance with section twenty, article one
of this chapter, and the sale of the timber is otherwise in the best interest of park development, without regard to proceeds derived from the sale of timber. The gross proceeds derived from the sale of timber shall be deposited into the operating budget of the park from which the timber was harvested;

(8) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to control the uses of parks: Provided, That the director may not permit public hunting, except as otherwise provided in this section, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park;

(9) Exempt designated state parks from the requirement that all payments must be deposited in a bank within twenty-four hours for amounts less than five hundred dollars notwithstanding any other provision of this code to the contrary: Provided, That such designated parks shall make a deposit in any amount no less than every seven working days;

(10) Waive the use fee normally charged to an individual or group for one day’s use of a picnic shelter or one week’s use of a cabin in a state recreation area when the individual or group donates the materials and labor for the construction of the picnic shelter or cabin: Provided, That the individual or group was authorized by the director to construct the picnic shelter or cabin and that it was constructed in accordance with the authorization granted and the standards and requirements of the division pertaining to the construction. The individual or group to whom the waiver is granted may use the picnic shelter for one reserved day or the cabin for one reserved week during each calendar year until the amount of the donation equals the amount of the loss of revenue from the waiver or until the individual dies or the group ceases to exist, whichever first occurs. The waiver is not transferable. The director shall permit free use of picnic shelters or cabins to individuals or groups
who have contributed materials and labor for construction of
picnic shelters or cabins prior to the effective date of this
section. The director shall propose a legislative rule for
promulgation in accordance with the provisions of article three,
chapter twenty-nine-a of this code governing the free use of
picnic shelters or cabins provided in this section, the eligibility
for free use, the determination of the value of the donations of
labor and materials, the appropriate definitions of a group and
the maximum time limit for the use;

(11) Provide within the parks a market for West Virginia
arts, crafts and products, which shall permit gift shops within
the parks to offer for sale items purchased on the open market
from local artists, artisans, craftsmen and suppliers and local or
regional crafts cooperatives;

(12) Provide that reservations for reservable campsites may
be made, upon two days’ advance notice, for any date for which
space is available within a state park or recreational area
managed by the parks and recreation section;

(13) Provide that reservations for all state parks and
recreational areas managed by the parks and recreation section
of the division may be made by use of a valid credit card;

(14) Develop a plan to establish a centralized computer
reservation system for all state parks and recreational areas
managed by the parks and recreation section and to implement
the plan as funds become available; and

(15) Notwithstanding the provisions of section fifty-eight,
article two of this chapter, the Natural Resources Commission
is authorized to promulgate rules in accordance with the
provisions of article three, chapter twenty-nine-a of this code to
permit and regulate the hunting of white-tail deer in any state
131 park as deemed appropriate by the director to protect the ecological integrity of the area.

CHAPTER 173

(S. B. 556 — By Senators Helmick, Sharpe, Chafin, Prezioso, Plymale, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §20-5-15 of the Code of West Virginia, 1931, as amended, relating to operational contracts within the state parks and public recreational system; removing the requirement of prior legislative approval and authorization; and requiring legislative notice and public hearings for certain contracts.

Be it enacted by the Legislature of West Virginia:

That §20-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-15. Authority to enter into certain operational contracts; terms and conditions; necessity for legislative notice and public hearing before certain facilities are placed under contract.

(a) The director may enter into a contract with a person, firm, corporation, foundation or public agency for the operation
of a commissary, restaurant, recreational facility or other establishment within the state parks and public recreational system, for a duration not to exceed ten years, but the contract may provide for an option to renew at the director’s discretion for an additional term or terms not to exceed ten years at the time of renewal. Prior to initiating of a contract for the operation of a state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall submit written notice of the specific location subject to the contract to the Legislature by letter to the Senate President and the Speaker of the House of Delegates.

(b) Prior to initiating a contract for a previously state-operated state park lodge, cabin, campground, gift shop, golf facility, including pro shop operations, or ski facility, the director shall conduct a public hearing to be held at a reasonable time and place within the county in which the facility is located. Notice of the time, place and purpose of the public hearing shall be provided as a Class II legal advertisement in accordance with the provisions of section two, article three, chapter fifty-nine of this code which notice shall be given at least for the first publication twenty days in advance of said hearing.

(c) Any contract entered into by the director shall provide an obligation upon the part of the operator that he or she maintain a level of performance satisfactory to the director and shall further provide that any contract may be terminated by the director in the event he or she determines that the performance is unsatisfactory and has given the operator reasonable notice of the termination.
AN ACT to amend and reenact §17-16A-1, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-18, §17-16A-18a, §17-16A-20, §17-16A-21, §17-16A-22 and §17-16A-29 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17-16A-13a, all relating to the West Virginia Parkways, Economic Development and Tourism Authority; eliminating the authority of the authority to issue certain additional revenue bonds after the effective date of the amendments to the section; placing certain limitations on the authority of the authority to issue revenue refunding bonds; limiting the purposes for which the authority may issue revenue refunding bonds; limiting the authority of the authority to acquire, hold or lease real property; limiting the ability of placement of new tolls; requiring public notice and hearings in certain circumstances; requiring certain procedures prior to any increase in rates, tolls or charges, approve certain contracts or proposals, issue refunding bonds or take any action that would result in or require an increase in rates, tolls or charges; requiring applications for commuter passes at every Division of Motor Vehicles office in the state; eliminating the authority to pledge state road funds in certain circumstances; and providing for a discount program.

Be it enacted by the Legislature of West Virginia:
That §17-16A-1, §17-16A-6, §17-16A-10, §17-16A-11, §17-16A-18, §17-16A-18a, §17-16A-20, §17-16A-21, §17-16A-22 and §17-16A-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17-16A-13a, all to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

§17-16A-6. Parkways authority’s powers.


§17-16A-13a. Public notice and hearing requirements.


§17-16A-18a. Corridor “L” toll fees authorized; commuter pass; annual report.

§17-16A-20. Parkway projects part of state road system.


§17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.

§17-16A-1. Constructing, operating, financing, etc., parkway, economic development and tourism projects.

In order to remove the present handicaps and hazards on the congested highways and roads in the State of West Virginia, to facilitate vehicular traffic throughout the state, to promote and enhance the tourism industry and to develop and improve tourist facilities and attractions in the state, to promote the agricultural, economic and industrial development of the state and to provide for the construction of modern express highways, including center divisions, ample shoulder widths, longsight distances, the bypassing of cities, multiple lanes in each direction and grade separations at all intersections with other highways and railroads, to provide for the development, construction, improvement and enhancement of state parks, tourist facilities and attractions and to provide for the improve-
ment and enhancement of state parks presently existing, the West Virginia Parkways, Economic Development and Tourism Authority (hereinafter created) is hereby authorized and empowered to construct, reconstruct, improve, maintain, repair and operate parkway projects, economic development projects and tourism projects (as those terms are hereinafter defined in section five of this article) at such locations as shall be approved by the state Department of Transportation.

§17-16A-6. Parkways authority’s powers.

(a) The parkways authority is hereby authorized and empowered:

(1) To adopt bylaws for the regulation of its affairs and the conduct of its business;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places within the state as it may designate;

(4) To sue and be sued in its own name, plead and be impleaded. Any and all actions against the parkways authority shall be brought only in the county in which the principal office of the parkways authority shall be located;

(5) To construct, reconstruct, improve, maintain, repair and operate projects at such locations within the state as may be determined by the parkways authority: Provided, That the parkways authority shall be prohibited from constructing motels or any other type of lodging facility within five miles of the West Virginia Turnpike;

(6) To issue parkway revenue bonds of the State of West Virginia, payable solely from revenues, for the purpose of paying all or any part of the cost of any one or more projects, which costs may include, with respect to the West Virginia
Turnpike, such funds as are necessary to repay to the State of West Virginia all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards:

Provided, That upon the effective date of the amendments to this section enacted during the regular session of the Legislature in two thousand six, the authorization to issue bonds pursuant to this subsection is limited to that of refunding bonds pursuant to subdivision seven of this subsection;

(7) To issue parkway revenue refunding bonds of the State of West Virginia, payable solely from revenues, for any one or more of the following purposes: (i) Refunding any bonds which shall have been issued under the provisions of this article or any predecessor thereof; and (ii) repaying to the state all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards;

(8) To fix and revise, from time to time, tolls for transit over each parkway project constructed by it or by the West Virginia Turnpike Commission;

(9) To fix and revise, from time to time, rents, fees or other charges, of whatever kind or character, for the use of each tourism project or economic development project constructed by it or for the use of any building, structure or facility constructed by it in connection with a parkway project;

(10) To acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties under this article: Provided, That the authority may not finance any transaction to acquire, hold or lease real property;

(11) To acquire in the name of the state by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner hereinafter provided, such public or private lands, including public parks, playgrounds or reserva-
tions, or parts thereof or rights therein, rights-of-way, property, rights, easements and interests, as it may deem necessary for carrying out the provisions of this article: Provided, That the authority may not finance any transaction to acquire real property. No compensation shall be paid for public lands, playgrounds, parks, parkways or reservations so taken, and all public property damaged in carrying out the powers granted by this article shall be restored or repaired and placed in its original condition as nearly as practicable;

(12) To designate the locations, and establish, limit and control such points of ingress to and egress from each project as may be necessary or desirable in the judgment of the parkways authority to ensure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

(13) To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article, and to employ consulting engineers, attorneys, accountants, architects, construction and financial experts, trustees, superintendents, managers and such other employees and agents as may be necessary in its judgment, and to fix their compensation. All such expenses shall be payable solely from the proceeds of parkway revenue bonds or parkway revenue refunding bonds issued under the provisions of this article, tolls or from revenues;

(14) To make and enter into all contracts, agreements or other arrangements with any agency, department, division, board, bureau, commission, authority or other governmental unit of the state to operate, maintain or repair any project;

(15) To receive and accept from any federal agency grants for or in aid of the construction of any project, and to receive
and accept aid or contributions from any source of either
money, property, labor or other things of value, to be held, used
and applied only for the purposes for which such grants and
contributions may be made;

(16) To do all acts and things necessary or convenient to
carry out the powers expressly granted in this article; and

(17) To file the necessary petition or petitions pursuant to
Title 11, United States Code, Sec. 401 (being section 81 of the
act of Congress entitled “An act to establish a uniform system
of bankruptcy throughout the United States”, approved July 1,
1898, as amended) and to prosecute to completion all proceed-
ings permitted by Title 11, United States Code, Secs. 401-403
(being sections 81 to 83, inclusive, of said act of Congress). The
State of West Virginia hereby consents to the application of
said Title 11, United States Code, Secs. 401-403, to the
parkways authority.

(b) Nothing in this article shall be construed to prohibit the
issuance of parkway revenue refunding bonds in a common
plan of financing with the issuance of parkway revenue bonds:
Provided, That upon the effective date of the amendments to
this section enacted during the regular session of the Legislature
in two thousand six, the authorization to issue bonds pursuant
to this subsection is limited to that of refunding bonds pursuant
to sections twenty-one and twenty-two of this article.


(a) The parkways authority is authorized to provide by
resolution for the issuance of parkway revenue bonds of the
state for the purpose of paying all or any part of the cost of one
or more projects: Provided, That this section shall not be
construed as authorizing the issuance of parkway revenue bonds
for the purpose of paying the cost of the West Virginia
Turnpike, which parkway revenue bonds may be issued only as
authorized under section eleven of this article. The principal of
and the interest on bonds shall be payable solely from the funds
provided for payment.

(b) The bonds of each issue shall be dated, shall bear
interest at a rate as may be determined by the parkways
authority in its sole discretion, shall mature at a time not
exceeding forty years from their date or of issue as may be
determined by the parkways authority, and may be made
redeemable before maturity, at the option of the parkways
authority at a price and under the terms and conditions as may
be fixed by the parkways authority prior to the issuance of the
bonds.

(c) The parkways authority shall determine the form of the
bonds, including any interest coupons to be attached thereto,
and shall fix the denomination of the bonds and the place of
payment of principal and interest, which may be at any bank or
trust company within or without the state.

(d) The bonds shall be executed by manual or facsimile
signature by the chair of the parkways authority, and the official
seal of the parkways authority shall be affixed to or printed on
each bond, and attested, manually or by facsimile signature, by
the secretary and treasurer of the parkways authority. Any
coupons attached to any bond shall bear the manual or facsimile
signature of the chair of the parkways authority.

(e) In case any officer whose signature or a facsimile of
whose signature appears on any bonds or coupons shall cease
to be an officer before the delivery of the bonds, the signature
or facsimile shall nevertheless be valid and sufficient for all
purposes the same as if he had remained in office until delivery.
In case the seal of the parkways authority has been changed
after a facsimile has been imprinted on the bonds, then the
facsimile seal will continue to be sufficient for all purposes.
(f) All bonds issued under the provisions of this article shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds may be issued in coupon or in registered form, or both, as the parkways authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the recorders into coupon bonds of any bonds registered as to both principal and interest.

(g) The parkways authority may sell the bonds at a public or private sale at a price it determines to be in the best interests of the state.

(h) The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the parkway project or projects for which the bonds were issued, and shall be disbursed in a manner consistent with the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds.

(i) If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, then additional bonds may in like manner be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, the additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued.

(j) If the proceeds of the bonds of any issue exceed the cost of the project or projects for which the bonds were issued, then the surplus shall be deposited to the credit of the sinking fund for the bonds.
(k) Prior to the preparation of definitive bonds, the parkways authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The parkways authority may also provide for the replacement of any bonds that become mutilated or are destroyed or lost.

(l) Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the state in accordance with this article.

(m) Notwithstanding any other provision of this code to the contrary, the authority may not issue parkway revenue bonds after the effective date of the amendments to this section enacted in the regular session of the Legislature in two thousand six: Provided, That the authority may issue revenue refunding bonds pursuant to sections twenty-one and twenty-two of this article for parkway revenue bonds previously issued prior to the effective date of the amendments to this section enacted in the regular session of the Legislature in two thousand six.


(a) The parkways authority is authorized to provide by resolution, at one time or from time to time, for the issuance of parkway revenue bonds of the state in an aggregate outstanding principal amount not to exceed, from time to time, two hundred million dollars for the purpose of paying: (i) All or any part of the cost of the West Virginia Turnpike, which may include, but not be limited to, an amount equal to the state funds used to upgrade the West Virginia Turnpike to federal interstate standards; (ii) all or any part of the cost of any one or more parkway projects that involve improvements to or enhancements of the West Virginia Turnpike, including, without
limitation, lane-widening on the West Virginia Turnpike and
that are or have been recommended by the parkways authority’s
traffic engineers or consulting engineers or by both of them
prior to the issuance of parkway revenue bonds for the project
or projects; and (iii) to the extent permitted by federal law, all
or any part of the cost of any related parkway project. For
purposes of this section only, a “related parkway project”
means any information center, visitors’ center or rest stop, or
any combination thereof, and any expressway, turnpike,
trunkline, feeder road, state local service road or park and forest
road which connects to or intersects with the West Virginia
Turnpike and is located within seventy-five miles of the
turnpike as it exists on the first day of June, one thousand nine
hundred eighty-nine, or any subsequent expressway, trunkline,
feeder road, state local service road or park and forest road
constructed pursuant to this article: Provided, That nothing in
this section shall be construed as prohibiting the parkways
authority from issuing parkway revenue bonds pursuant to
section ten of this article for the purpose of paying all or any
part of the cost of any related parkway project: Provided,
however, That none of the proceeds of the issuance of parkway
revenue bonds under this section shall be used to pay all or any
part of the cost of any economic development project, except as
provided in section twenty-three of this article: Provided
further, That nothing in this section shall be construed as
prohibiting the parkways authority from issuing additional
parkway revenue bonds to the extent permitted by applicable
federal law for the purpose of constructing, maintaining and
operating any highway constructed, in whole or in part, with
money obtained from the Appalachian Regional Commission
as long as the highway connects to the West Virginia Turnpike
as it existed as of the first day of June, one thousand nine
hundred eighty-nine: And provided further, That, for purposes
of this section, in determining the amount of bonds outstanding,
from time to time, within the meaning of this section: Original
par amount or original stated principal amount at the time of
issuance of bonds shall be used to determine the principal amount of bonds outstanding, except that the amount of parkway revenue bonds outstanding under this section may not include any bonds that have been retired through payment, defeased through the deposit of funds irrevocably set aside for payment or otherwise refunded so that they are no longer secured by toll revenues of the West Virginia Turnpike: And provided further, That the authorization to issue bonds under this section is in addition to the authorization and power to issue bonds under any other section of this code: And provided further, That, without limitation of the authorized purposes for which parkway revenue bonds are otherwise permitted to be issued under this section, and without increasing the maximum principal par amount of parkway revenue bonds permitted to be outstanding, from time to time, under this section, the authority is specifically authorized by this section to issue, at one time or from time to time, by resolution or resolutions under this section, parkway revenue bonds under this section for the purpose of paying all or any part of the cost of one or more parkway projects that: (i) Consist of enhancements or improvements to the West Virginia Turnpike, including, without limitation, projects involving lane widening, resurfacing, surface replacement, bridge replacement, bridge improvements and enhancements, other bridge work, drainage system improvements and enhancements, drainage system replacements, safety improvements and enhancements, and traffic flow improvements and enhancements; and (ii) have been recommended by the authority’s consulting engineers or traffic engineers, or both, prior to the issuance of the bonds. Except as otherwise specifically provided in this section, the issuance of parkway revenue bonds pursuant to this section, the maturities and other details of the bonds, the rights of the holders of the bonds, and the rights, duties and obligations of the parkways authority in respect of the bonds shall be governed by the provisions of this article insofar as the provisions are applicable.
(b) Notwithstanding any other provision of this code to the contrary, the authority may not issue parkway revenue bonds after the effective date of the amendments to this section enacted in the regular session of the Legislature in two thousand six: Provided, That the authority may issue revenue refunding bonds pursuant to sections twenty-one and twenty-two of this article for parkway revenue bonds previously issued prior to the effective date of the amendments to this section enacted during the regular session of the Legislature in two thousand six.

§17-16A-13a. Public notice and hearing requirements.

(a) Notwithstanding any provision of the law to the contrary, on and after the first day of July, two thousand six, unless the parkways authority satisfies the public notice and hearing requirements set forth in this section, it may not:

(1) Increase any rates, tolls or charges along any portion of the parkway, or approve any proposal or contract that would result in or require an increase in any rates or tolls along any portion of the parkway;

(2) Issue any refunding bond pursuant to sections twenty-one and twenty-two of this article which would require the parkways authority to increase rates, tolls or charges;

(3) Approve any contract or project which would require or result in an increase in the rates, tolls or charges along any portion of the parkway; or,

(4) Take any other action which would require or result in an increase in the rates, tolls or charges along any portion of the parkway.

(b) The parkways authority shall publish notice of any proposed contract, project or bond which would result in or require an increase in any toll rates or charges, or the extension
of any bond repayment obligation, along with the associated
rate increase or revised bond repayment period, by a Class II
legal advertisement in accordance with the provisions of article
three, chapter fifty-nine of this code, published and of general
circulation in each county which borders the parkway.

(c) Once notice has been provided in accordance with the
provisions of this section, the parkways authority shall conduct
a public hearing in each county which borders the parkway, and
any citizen may communicate by writing to the parkways
authority his or her opposition to or approval of such proposal
or rate or toll increase or amended bond terms. The public
notice and written public comment period shall be conducted
not less than forty-five days from the publication of the notice
and the affected public must be provided with at least twenty
(20) days' notice of each scheduled public hearing.

(d) All studies, records, documents and other materials
which were considered by the parkways authority before
recommending the approval of any such project or recommend-
ing the adoption of any such increase shall be made available
for public inspection for a period of at least twenty days prior
to the scheduled hearing at a convenient location in each county
where a public hearing shall be held.

(e) At the conclusion of all required public hearings, the
parkways authority shall render a final decision which shall
include written findings of fact supporting its final decision on
any proposed project which would result in or require a rate
increase, or prior to finally approving any proposed rate or toll
increase, and such required findings and conclusions must
reference and give due consideration to the public comments
and additional evidence offered during the public hearings.

(f) On and after the first day of July, two thousand six, any
final action taken by the parkways authority to approve or
implement any proposed rate increase, contract or project which
would require or result in a proposed increase of any rate or
tolls along any portion of the parkway without first satisfying
the public notice and hearing requirements of this section, shall
be null and void.


(a) Except as provided herein, when all bonds issued under
the provisions of this article in connection with any parkway
project or projects and the interest thereon shall have been paid
or a sufficient amount for the payment of all such bonds and the
interest thereon to the maturity thereof shall have been set aside
in trust for the benefit of the bondholders, such project or
projects, if then in good condition and repair to the satisfaction
of the Commissioner of the state Division of Highways, shall be
transferred to the state Division of Highways and shall
thereafter be maintained by the state Division of Highways free
of tolls.

(b) No later than the first day of February, one thousand
nine hundred ninety, the parkways authority shall discontinue,
remove and not relocate all toll collection facilities on the West
Virginia Turnpike as the same existed on June first, one
thousand nine hundred eighty-nine, except for the three main
toll barriers and collection facilities and, provided solely that
the provisions of section eighteen-a are complied with, the toll
collection facilities at the intersection of U. S. Route 19
(Imidor “L”) and said turnpike.

§17-16A-18a. Corridor “L” toll fees authorized; commuter pass;
annual report.

(a) The parkways authority is hereby authorized to operate
the currently existing toll collection facility located at the
interchange of U. S. Route 19 (Imidor “L”) and said turnpike
subject to the following:
(1) The toll fee charges by the Parkways, Economic Development and Tourism Authority at its toll facilities located at the interchange of U. S. Route 19 (Corridor “L”) and said turnpike shall not exceed those toll charges levied and collected by the authority at said interchange as of the first day of January, one thousand nine hundred ninety, and hereafter, no proposed increase in such toll fees shall be implemented by the parkways authority unless the authority shall have first complied with validly promulgated and legislatively approved rules pursuant to the applicable provisions of chapter twenty-nine-a of this code;

(2) The parkways authority shall maintain, advertise, implement and otherwise make generally available to all qualified members of the public, resident or nonresident, a system of commuter passes, in a form to be determined by the authority: Provided, That said system of commuter passes shall, at a minimum, permit the holder of such pass or passes, after paying the applicable fee to the authority, to travel through the U. S. Route 19 (Corridor “L”) turnpike interchange and toll facilities on an unlimited basis, without additional charge therefor, for a period of one year after the issuance of said commuter pass or passes: Provided, however, That the cost for such commuter pass or passes shall in no event aggregate more than five dollars per year for a full calendar year of unlimited travel through the U. S. Route 19 (Corridor “L”) turnpike interchange toll facilities. Applications for these commuter passes are to be made available by the Parkway Authority to every Division of Motor Vehicles office in the state.

To the extent required or necessary, the parkways authority is further hereby authorized and empowered, in addition to the extent previously authorized and empowered pursuant to section six and section thirteen-b, article sixteen-a of this chapter, to promulgate rules in accordance with chapter twenty-nine-a of this code with regard to the implementation of
proposed future toll increases at the U. S. Route 19 (Corridor “L”) turnpike toll facility;

(3) The system of commuter passes implemented in accordance with the provisions of subdivision (2), subsection (a), above, shall be available only for use when operating or traveling in a Class “A” motor vehicle as herein defined. Whoever shall knowingly or intentionally utilize any commuter pass issued in accordance with this section while operating other than a Class “A” motor vehicle, as herein defined, at the U. S. Route 19 (Corridor “L”) turnpike toll facility, or any other toll facility at or upon which such pass may later be usable, shall be guilty of a misdemeanor, and for every such offense shall, upon conviction thereof, be punished in accordance with the provisions of section seventeen, article sixteen-a of this chapter; and the parkways authority shall hereafter be authorized and empowered to cancel any such commuter pass or passes improperly used in accordance with this section;

(4) In addition to the annual report required by section twenty-six of this article, the parkways authority will prepare and deliver to the Governor, the Speaker of the House of Delegates and the President of the Senate a separate annual report of toll revenues collected from the U. S. Route 19 (Corridor “L”) turnpike toll facility. The report shall disclose separately the toll revenues generated from regular traffic and the commuter pass created herein. The reports shall include, but not be limited to, disclosing separately the expenditure of said toll revenues generated from the U. S. Route 19 (Corridor “L”) turnpike toll facility including a description of the purposes for which such toll revenues are expended;

(5) In the event any court of competent jurisdiction shall issue an order which adjudges that any portion of subdivision (1), (2) or (3) subsection (a) of this section is illegal, unconstitutional, unenforceable or in any manner invalid, the parkways
authority shall discontinue, remove and not otherwise relocate
the U. S. Route 19 (Corridor “L”) turnpike toll facility within
three hundred sixty-five days after the date upon which said
court order is final or all appeals to said order have been
exhausted;

(6) For the purpose of this section, a Class “A” vehicle shall
be defined as a motor vehicle of passenger type and truck with
a gross weight of not more than 8,000 pounds and registered or
eligible for registration as a Class “A” vehicle in accordance
with section one, article ten, chapter seventeen-a of this code as
the same is currently constituted; and

(7) Notwithstanding any other provisions of the this code to
the contrary, the parkways authority may not promulgate
emergency rules in accordance with section fifteen, article
three, chapter twenty-nine-a of this code to increase or decrease
toll fees or the commuter pass fee established herein.

(b) Nothing in this section is to be construed to apply to,
regulate, or in any manner affect the operation of the three main
line toll barriers and toll collection facilities currently located
on the West Virginia Turnpike and operated by the parkways
authority as Barrier A, Barrier B and Barrier C (I-64, I-77).

§17-16A-20. Parkway projects part of state road system.

It is hereby declared that any expressway, turnpike, feeder
road, state local service road or park and forest road or other
road, or any subsequent expressway, turnpike feeder road, state
local service road, park and forest road or other road con-
structed pursuant to this article shall be a part of the state road
system, although subject to the provisions of this article and of
any bonds or trust agreements entered into pursuant thereto, and
that the construction of such parkway projects shall be consid-
ered as developments of the state road system.

The parkways authority is hereby authorized to provide by resolution for the issuance of parkway revenue refunding bonds of the state for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds; and, if deemed advisable by the parkways authority, for the additional purpose of constructing improvements, extensions or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued: Provided, That this section shall not be construed as authorizing the issuance of parkway revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article, or any predecessor thereof, in connection with the construction of the West Virginia Turnpike, which revenue refunding bonds may be issued only as authorized under section twenty-two of this article. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof and the rights, duties and obligations of the parkways authority in respect of the same shall be governed by the provisions of this article insofar as the same may be applicable. After the effective date of the amendments to this article enacted by the Legislature during the regular session in two thousand six, no issuance of a refunding bond may extend the maturity date of such bond being refunded and may not exceed the outstanding principal of such bond being refunded. Any refunding bond issued after the effective date of the amendments to this article enacted by the Legislature during the regular session in two thousand six shall be structured to provide for approximately level annual debt service savings each fiscal year through the final maturity or structured to approximate the level of debt service that would have been paid prior to the refunding, with a preponderance of the savings
being deferred toward eliminating or reducing the most distant maturities. For purposes of this section, the outstanding principal is to be determined as of the date on which the revenue bond is refinanced.


The parkways authority is hereby authorized to provide by resolution for the issuance of parkway revenue refunding bonds of the state in an aggregate principal amount not to exceed sixty million dollars for the purpose of refunding any bonds which shall have been issued under this article, or any predecessor thereof, in connection with the construction of the West Virginia Turnpike, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, to the extent permissible under federal law and if deemed advisable by the parkways authority, for repaying to the state all or any part of the state funds used to upgrade the West Virginia Turnpike to federal interstate standards: Provided, That any proceeds derived from the issuance of such bonds which are used on any parkway project other than the West Virginia Turnpike must be used solely on parkway projects: (i) Which are either connected to or intersect with the West Virginia Turnpike and are within seventy-five air miles of said turnpike as it exists on the first day of June, one thousand nine hundred eighty-nine, or any subsequent expressway, trunkline, turnpike, feeder road, state local service road or park and forest road constructed pursuant to this article; and (ii) which involve the upgrading or addition of interchanges, the construction of expressways or feeder roads, or the upgrading or construction of information centers, visitors’ centers, rest stops or any combination thereof: Provided, however, That none of the proceeds of the issuance of parkway revenue refunding bonds issued under this section shall be used to pay all or any part of the cost of any economic
development project. Except as otherwise specifically provided in this section, the issuance of parkway revenue refunding bonds pursuant to this section, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the parkways authority in respect of the same, shall be governed by the provisions of this article insofar as the same may be applicable.

After the effective date of the amendments to this article enacted by the Legislature during the regular session in two thousand six, no issuance of a refunding bond may extend the maturity date of such bond being refunded and may not exceed the outstanding principal of such bond being refunded. Any refunding bond issued after the effective date of the amendments to this article enacted by the Legislature during the regular session in two thousand six shall be structured to provide for approximately level annual debt service savings each fiscal year through the final maturity or structured to approximate the level of debt service that would have been paid prior to the refunding, with a preponderance of the savings being deferred toward eliminating or reducing the most distant maturities. For purposes of this section, the outstanding principal is to be determined as of the date on which the revenue bond is refinanced.

§17-16A-29. Discount program for purchasers of West Virginia EZ Pass transponders.

(a) The parkways authority is hereby authorized to create a discount program for purchasers of West Virginia EZ Pass transponders: Provided, That prior to any increase in any rates, tolls or charges along any portion of the parkway, the parkways authority shall create a discount program for purchasers of West Virginia EZ Pass transponders. Any discount program created pursuant to this section shall provide discounts for each class of motor vehicles.
(b) The authority must provide public notice and hold public hearings on any proposed discount program as required in section thirteen-a of this article prior to implementation of such program.

(c) For purposes of this section, a "West Virginia EZ Pass transponder" means a device sold by the parkways authority which allows the purchaser to attach the device to his or her motor vehicle and travel through a Parkways toll facility and be billed for such travel by the authority.

CHAPTER 175

(S. B. 166 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §62-12-12, §62-12-13, §62-12-18, §62-12-19, §62-12-23 and §62-12-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-12-12a, all relating to the West Virginia Parole Board; providing for the appointment, powers and duties of the West Virginia Parole Board; providing for the appointment of the Chairperson of the West Virginia Parole Board by the Governor; providing for the consideration of parole and parole revocation by panels of the board; and providing for panels of the board to conduct parole interviews, consider parolees for discharge from parole and hold any other hearings authorized by the board.

Be it enacted by the Legislature of West Virginia:
That §62-12-12, §62-12-13, §62-12-18, §62-12-19, §62-12-23 and §62-12-24 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 §62-12-12a, all to read as follows:

ARTICLE 12. PROBATION AND PAROLE.


§62-12-12a. Parole board panels.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.


§62-12-23. Notification of parole hearing; victim’s right to be heard; notification of release on parole.

§62-12-24. Request to continue for good cause and timely notice required.


There shall be a state board of parole, known as the “West Virginia Parole Board”. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party. The board shall be appointed by the Governor, by and with the advice and consent of the Senate. Appointments following the effective date of this section shall be made in such a manner that each congressional district is represented and so that no more than four and no less than two members of the board reside in any one congressional district. No more than two members of the board may reside in any one county. Each member of the board shall have a degree in criminal justice or like experience and academic training and shall be otherwise competent to perform the duties of his or her office. The members shall be appointed for overlapping terms of six years. Any member qualified under this section is eligible for reappointment. The members of the board shall devote their full time and attention to their board duties. The Governor shall
appoint one of the nine appointed members to serve as chairperson at the Governor’s will and pleasure.

§62-12-12a. Parole board panels.

(a) The board shall sit in panels of three members for the purpose of conducting hearings and making determinations concerning the release of any inmate on parole, conducting hearings and making determinations regarding the revocation of parole, considering any eligible parolee for release from further supervision and discharge from parole, conducting parole interviews and conducting any other hearing provided for in this article. Membership on each panel shall be appointed on a rotating basis by the chairperson of the board. Two members of each panel shall constitute a quorum for the transaction of official business.

(b) When the board sits in panels as herein authorized, each panel shall act in the same manner and under the same authority as the full board. All authority, duties, powers and responsibilities of the board on any matter brought before the panel for hearing shall be exercised by the panel as though heard and decided by the full board. Decisions of each panel shall constitute a decision of the board. All procedures of the board relating to the conduct of hearings shall apply to hearings before the panels of the board.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The board of parole, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations hereinafter provided, shall release any inmate on parole for terms and upon conditions as are provided by this article.

(b) Any inmate of a state correctional center is eligible for parole if he or she:
(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be, except that in no case is any person who committed, or attempted to commit a felony with the use, presentment or brandishing of a firearm, eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: Provided, That any person who committed, or attempted to commit, any violation of section twelve, article two, chapter sixty-one of this code, with the use, presentment or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this section applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm. No person is ineligible for parole under the provisions of this subdivision because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm unless such fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found by the court at the time of trial upon a plea of guilty or nolo contendere; or (ii) found by the jury, upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found by the court, if the matter was tried by the court without a jury.

For the purpose of this section, the term “firearm” means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder or any other similar means.

(B) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:
(i) Apply to all applicable offenses occurring on or after the first day of August of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which the finding will be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried; and

(iv) Does not apply with respect to cases not affected by the amendments and in such cases the prior provisions of this section apply and are construed without reference to the amendments.

Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has maintained a record of good conduct in prison for a period of at least three months immediately preceding the date of his or her release on parole;
(4) Has submitted to the board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment, the parole release plan having been approved by the Commissioner of Corrections or his or her authorized representative; and

(5) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of a person serving a life sentence, no person who has been previously twice convicted of a felony may be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. No person sentenced for life may be paroled until he or she has served ten years, and no person sentenced for life who has been previously twice convicted of a felony may be paroled until he or she has served fifteen years: Provided, That no person convicted of first degree murder for an offense committed on or after the tenth day of June, one thousand nine hundred ninety-four, is eligible for parole until he or she has served fifteen years.

(d) In the case of a person sentenced to any state correctional center, it is the duty of the board, as soon as a person becomes eligible, to consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the person of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and is still eligible: Provided, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of a person serving a life sentence.
(f) Any person serving a sentence on a felony conviction who becomes eligible for parole consideration prior to being transferred to a state correctional center may make written application for parole. The terms and conditions for parole consideration established by this article apply to such inmates.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted hereunder are intended or may be construed to contravene, limit or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines or otherwise exercise his or her constitutional powers of executive clemency.

(h) The Division of Corrections is charged with the duty of supervising all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state parolee supervision.

(i) (1) When considering an inmate of a state correctional center for release on parole, the parole board panel considering the parole is to have before it an authentic copy of or report on the inmate’s current criminal record as provided through the West Virginia State Police, the United States Department of Justice or other reliable criminal information sources and written reports of the warden or superintendent of the state correctional center to which such inmate is sentenced:

(i) On the inmate’s conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered therefor;

(ii) On improvement or other changes noted in the inmate’s mental and moral condition while in custody, including a
statement expressive of the inmate’s current attitude toward
society in general, toward the judge who sentenced him or her,
toward the prosecuting attorney who prosecuted him or her,
toward the policeman or other officer who arrested the inmate
and toward the crime for which he or she is under sentence and
his or her previous criminal record;

(iii) On the inmate’s industrial record while in custody
which shall include: The nature of his or her work, occupation
or education, the average number of hours per day he or she has
been employed or in class while in custody and a recommenda-
tion as to the nature and kinds of employment which he or she
is best fitted to perform and in which the inmate is most likely
to succeed when he or she leaves prison;

(iv) On physical, mental and psychiatric examinations of
the inmate conducted, insofar as practicable, within the two
months next preceding parole consideration by the board.

(2) The board panel considering the parole may waive the
requirement of any report when not available or not applicable
as to any inmate considered for parole but, in every such case,
shall enter in the record thereof its reason for the waiver:
Provided, That in the case of an inmate who is incarcerated
because the inmate has been found guilty of, or has pleaded
guilty to a felony under the provisions of section twelve, article
eight, chapter sixty-one of this code or under the provisions of
article eight-b or eight-c of said chapter, the board panel may
not waive the report required by this subsection and the report
is to include a study and diagnosis including an on-going
treatment plan requiring active participation in sexual abuse
counseling at an approved mental health facility or through
some other approved program: Provided, however, That nothing
disclosed by the person during the study or diagnosis may be
made available to any law-enforcement agency, or other party
without that person’s consent, or admissible in any court of this
state, unless the information disclosed indicates the intention or
plans of the parolee to do harm to any person, animal, institu-
tion or to property. Progress reports of outpatient treatment are
to be made at least every six months to the parole officer
supervising the person. In addition, in such cases, the parole
board shall inform the prosecuting attorney of the county in
which the person was convicted of the parole hearing and shall
request that the prosecuting attorney inform the parole board of
the circumstances surrounding a conviction or plea of guilty,
plea bargaining and other background information that might be
useful in its deliberations.

(j) Before releasing any inmate on parole, the board of
parole shall arrange for the inmate to appear in person before a
parole board panel and the panel may examine and interrogate
him or her on any matters pertaining to his or her parole,
including reports before the board made pursuant to the
provisions hereof: Provided, That an inmate may appear by
video teleconference if the members of the panel conducting the
examination are able to contemporaneously see the inmate and
hear all of his or her remarks and if the inmate is able to
contemporaneously see each of the members of the panel
conducting the examination and hear all of the members’
remarks. The panel shall reach its own written conclusions as
to the desirability of releasing the inmate on parole and the
majority of the panel considering the release shall concur in the
decision. The warden or superintendent shall furnish all
necessary assistance and cooperate to the fullest extent with the
parole board. All information, records and reports received by
the board are to be kept on permanent file.

(k) The board and its designated agents are at all times to
have access to inmates imprisoned in any state correctional
center or in any city, county or regional jail in this state and
shall have the power to obtain any information or aid necessary
to the performance of its duties from other departments and
agencies of the state or from any political subdivision thereof.
The board shall, if so requested by the Governor, investigate and consider all applications for pardon, reprieve or commutation and shall make recommendation thereon to the Governor.

Prior to making a recommendation for pardon, reprieve or commutation and prior to releasing any inmate on parole, the board shall notify the sentencing judge and prosecuting attorney at least ten days before the recommendation or parole.

Any person released on parole shall participate as a condition of parole in the litter control program of the county to the extent directed by the board, unless the board specifically finds that this alternative service would be inappropriate.


The period of parole shall be the maximum of any sentence, less deductions for good conduct and work as provided by law, for which the paroled inmate, at the time of release, was subject to imprisonment under his or her definite or indeterminate sentence, as the case may be: Provided, That any time after a parolee has been on parole for a period of one year from the date of his or her release, a panel of the board may, when in its judgment the ends of parole have been attained and the best interests of the state and the parolee will be served thereby, release the parolee from further supervision and discharge him or her from parole: Provided, however, That no inmate sentenced to serve a life term of imprisonment and released on parole shall be discharged from supervision and parole in a period less than five years from the date of his or her release on parole.

No parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia or the territorial possessions of the United States, the crime of treason, murder,
aggravated robbery, first degree sexual assault, second degree
sexual assault, a sexual offense against a minor, incest or
offenses with the same essential elements if known by other
terms in other jurisdictions shall be discharged from parole. A
parolee serving a sentence in any correctional facility of another
state or the United States may, unless incarcerated for one of
the above enumerated crimes, be discharged from parole while
so serving his or her sentence in said correctional facility or be
continued on parole or returned to West Virginia as a parole
violator, in the discretion of the parole board.


(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 commis-
sioner’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 before a panel of the board, at
which the parolee and his or her counsel are given an opportu-
nity to attend. If at the hearing it appears to the satisfaction of
the panel 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 panel 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 panel may, if 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 panel’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 panel considering revocation 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 a panel of 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.

§62-12-23. Notification of parole hearing; victim’s right to be heard; notification of release on parole.

(a) Following the sentencing of a person who has been convicted of murder, aggravated robbery, sexual assault in the first or second degree, kidnapping, child abuse resulting in injury, child neglect resulting in injury, arson or a sexual offense against a minor, the prosecuting attorney who prosecuted the offender shall prepare a “Parole Hearing Notification Form”. This form shall contain the following information:

(1) The name of the county in which the offender was prosecuted and sentenced;

(2) The name of the court in which the offender was prosecuted and sentenced;

(3) The name of the prosecuting attorney or assistant prosecuting attorney who prosecuted the offender;

(4) The name of the judge who presided over the criminal case and who sentenced the offender;
(5) The names of the law-enforcement agencies and officers who were primarily involved with the investigation of the crime for which the offender was sentenced; and

(6) The names, addresses and telephone numbers of the victims of the crime for which the offender was sentenced or the names, addresses and telephone numbers of the immediate family members of each victim of the crime, including, but not limited to, each victim’s spouse, father, mother, brothers and sisters.

(b) The prosecuting attorney shall retain the original of the “Parole Hearing Notification Form” and shall provide copies of it to the circuit court which sentenced the offender, the parole board, the Commissioner of Corrections and to all persons whose names and addresses are listed on the “Parole Hearing Notification Form”.

(c) At least forty-five days prior to the date of a parole hearing, the parole board shall notify all persons who are listed on the “Parole Hearing Notification Form” of the date, time and place at which a parole hearing will be held. Such notice shall be sent by certified mail, return receipt requested. The notice shall state that the victims of the crime have the right to submit a written statement to the parole board and to attend the parole hearing to be heard regarding the propriety of granting parole to the prisoner. The notice shall also state that only the victims may submit written statements and speak at the parole hearing unless a victim is deceased, is a minor or is otherwise incapacitated.

(d) The panel considering the parole shall inquire during the parole hearing as to whether the victims of the crime or their representatives, as provided in this section, are present. If so, the panel shall permit those persons to speak at the hearing regarding the propriety of granting parole for the prisoner.
(e) If the panel grants parole, it shall immediately set a date on which the prisoner will be released. Such date shall be no earlier than thirty days after the date on which parole is granted. On the date on which parole is granted, the parole board shall notify all persons listed on the “Parole Hearing Notification Form” that parole has been granted and that the prisoner will be released on a particular date. A written statement of reasons for releasing the prisoner, prepared pursuant to subdivision (4), subsection (b), section thirteen of this article, shall be provided upon request to all persons listed on the “Parole Hearing Notification Form”.

§62-12-24. Request to continue for good cause and timely notice required.

(a) Any inmate scheduled for a parole interview shall, if he or she desires to continue the interview, file with the institutional parole officer a written waiver of his or her right to an interview on the date set on a form provided by the commissioner of corrections at least thirty days prior to the interview date. A copy of the waiver shall be supplied to the board of parole.

(b) The board shall propose for promulgation a legislative rule pursuant to article three, chapter twenty-nine-a of this code setting forth criteria constituting emergency circumstances where a waiver of interview filed less than thirty days prior to the scheduled interview shall constitute good cause for a continuance.

(c) Any inmate failing to appear for his or her scheduled parole interview who has not waived his or her interview pursuant to subsection (a) or (b) of this section shall be deemed to have waived his or her right to a parole interview for a period of twelve months from the date of the interview at which he or she failed to appear. The panel conducting the interview shall
have discretion to reset the interview with notice to the inmate and any other person or persons entitled by law to notice, prior to the expiration of the twelve-month waiver period.

CHAPTER 176

(S. B. 709 — By Senator Bailey)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §6B-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8A-2-3, §8A-2-4 and §8A-2-5 of said code, all relating to members of planning commissions; allowing for the service of planning commission members who have businesses that appear before the planning commission under certain circumstances; and providing exceptions to limitations on practice before a planning commission.

Be it enacted by the Legislature of West Virginia:

That §6B-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8A-2-3, §8A-2-4 and §8A-2-5 of said code be amended and reenacted, all to read as follows:

Chapter
6B. General Provisions Respecting Officers.
8A. Land Use Planning.

CHAPTER 6B. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY
§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) Persons subject to section. — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) Use of public office for private gain. —

(1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact,
be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person’s employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(c) Gifts. — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: Provided, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: Provided,
however, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;
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(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when: (1) That official is a part-time elected public official; (2) the fee is not related to the official’s public position or duties; (3) the fee is for services provided by the public official that are related to the public official’s regular, nonpublic trade, profession, occupation, hobby or avocation; and (4) the honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt
thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature’s participation and which assist this and other state legislatures and their staff through any of the following:

(i) Advancing the effectiveness, independence and integrity of legislatures in the states of the United States;

(ii) Fostering interstate cooperation and facilitating information exchange among state legislatures;

(iii) Representing the states and their legislatures in the American federal system of government;

(iv) Improving the operations and management of state legislatures and the effectiveness of legislators and legislative staff and to encourage the practice of high standards of conduct by legislators and legislative staff;

(v) Promoting cooperation between state legislatures in the United States and legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative
member in conjunction with the fund raising or solicitation
effort. The legislative organization for which solicitations are
being made shall file with the Joint Committee on Government
and Finance and with the Secretary of State for publication in
the State Register as provided in article two, chapter twenty-
ine-a of this code, copies of letters, brochures and other
solicitation documents, along with a complete list of the names
and last known addresses of all donors and the amount of
donations received. Any solicitation by a legislative member
shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This
endorsement does not imply support of the soliciting organiza-
tion, nor of the sponsors who may respond to the solicitation.
A copy of all solicitations are on file with the West Virginia
Legislature’s Joint Committee on Government and Finance and
with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of
the Board of Public Works may solicit donations for a regional
or national organization conference or other function related to
the office of the member to be held in the state for the purpose
of deferring costs to the state for hosting of the conference or
function. The solicitations may only be made in writing. The
organization may act as fiscal agent for the conference and
receive all donations. In the alternative, a bona fide banking
institution may act as the fiscal agent. The official letterhead of
the office of the Board of Public Works member may not be
used in conjunction with the fund-raising or solicitation effort.
The organization for which solicitations are being made shall
file with the Joint Committee on Government and Finance, with
the Secretary of State for publication in the State Register as
provided in article two, chapter twenty-nine-a of this code and
with the commission, copies of letters, brochures and other
solicitation documents, along with a complete list of the names
and last known addresses of all donors and the amount of
186 donations received. Any solicitation by a member of the Board of Public Works shall contain the following disclaimer: "This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review." Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four, chapter five-a of this code.

199 (d) Interests in public contracts. — (1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: Provided, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: Provided, however, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

219 (2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a
member of his or her immediate family or a business with
which he or she is associated shall not be considered as having
an interest in a public contract when such a person has a limited
interest as an owner, shareholder or creditor of the business
which is the contractor on the public contract involved. A
limited interest for the purposes of this subsection is:

(A) An interest:

(i) Not exceeding ten percent of the partnership or the
outstanding shares of a corporation; or

(ii) Not exceeding thirty thousand dollars interest in the
profits or benefits of the contract; or

(B) An interest as a creditor:

(i) Not exceeding ten percent of the total indebtedness of a
business; or

(ii) Not exceeding thirty thousand dollars interest in the
profits or benefits of the contract.

(3) Where the provisions of subdivisions (1) and (2) of this
subsection would result in the loss of a quorum in a public body
or agency, in excessive cost, undue hardship, or other substan-
tial interference with the operation of a state, county, munici-
pality, county school board or other governmental agency, the
affected governmental body or agency may make written
application to the Ethics Commission for an exemption from
subdivisions (1) and (2) of this subsection.

(e) Confidential information. — No present or former
public official or employee may knowingly and improperly
disclose any confidential information acquired by him or her in
the course of his or her official duties nor use such information
to further his or her personal interests or the interests of another
person.
(f) **Prohibited representation.** — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client’s interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided,* That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on the first day of July, one thousand nine hundred eighty-nine, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) **Limitation on practice before a board, agency, commission or department.** — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code:

(1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after
the termination of his or her public service or public employ-
ment with a governmental entity authorized to hear contested
cases or promulgate or propose rules, appear in a representative
capacity before the governmental entity in which he or she
serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, 
action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license 
or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any 
formal or informal appearance before, or any written or oral 
communication with, any public agency on behalf of any 
person: Provided, That nothing contained in this subsection 
shall prohibit, during any period, a former public official or 
employee from being retained by or employed to represent, 
assist or act in a representative capacity on behalf of the public 
agency by which he or she was employed or in which he or she 
served. Nothing in this subsection shall be construed to prevent 
a former public official or employee from representing another 
state, county, municipal or other governmental entity before the 
governmental entity in which he or she served or was employed 
within one year after the termination of his or her employment 
or service in the entity.

(3) A present or former public official or employee may 
appear at any time in a representative capacity before the 
Legislature, a county commission, city or town council or 
county school board in relation to the consideration of a statute, 
budget, ordinance, rule, resolution or enactment.
(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the six months prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency to which he or she is working or a subordinate is known by him or her to be working.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of
employment as well as any direct or indirect contact with a
potential employer relating to the availability or conditions of
employment in furtherance of obtaining employment; and
“subordinate” includes only those agency personnel over whom
the public official or public employee has supervisory responsi-

(3) A full-time public official or full-time public employee
who would be adversely affected by the provisions of this
subsection may apply to the Ethics Commission for an
exemption from the prohibition contained in subdivision (1) of
this subsection. The Ethics Commission shall by legislative rule
establish general guidelines or standards for granting an
exemption, but shall decide each application on a case-by-case
basis.

(4) A full-time public official or full-time public employee
may not take personal regulatory action on a matter affecting a
person by whom he or she is employed or with whom he or she
is seeking employment or has an agreement concerning future
employment.

(5) A full-time public official or full-time public employee
may not receive private compensation for providing informa-
tion or services that he or she is required to provide in carrying
out his or her public job responsibilities.

(i) Members of the Legislature required to vote. —
Members of the Legislature who have asked to be excused from
voting or who have made inquiry as to whether they should be
excused from voting on a particular matter and who are
required by the presiding officer of the House of Delegates or
Senate of West Virginia to vote under the rules of the particular
house shall not be guilty of any violation of ethics under the
provisions of this section for a vote so cast.
(j) **Limitations on participation in licensing and rate-making proceedings.** — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than one thousand dollars during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency’s proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(k) **Certain compensation prohibited.** — (1) A public employee may not receive additional compensation from another publicly funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee’s compensation from one public employer is reduced by the amount of compensation received from the other public employer;
(B) The public employee’s compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(l) Certain expenses prohibited. — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(m) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private
entities and thereby derives private benefits from such activities
shall be exempt from the prohibitions contained in subsections
(b), (c) and (d) of this section when the activity is approved as
a part of an employment contract with the governing board of
the institution or has been approved by the employee’s
department supervisor or the president of the institution by
which the faculty or staff member is employed.

(n) Except as provided in this section, a person who is a
public official or public employee may not solicit private
business from a subordinate public official or public employee
whom he or she has the authority to direct, supervise or control.
A person who is a public official or public employee may
solicit private business from a subordinate public official or
public employee whom he or she has the authority to direct,
supervise or control when:

(A) The solicitation is a general solicitation directed to the
public at large through the mailing or other means of distribu-
tion of a letter, pamphlet, handbill, circular or other written or
printed media; or

(B) The solicitation is limited to the posting of a notice in
a communal work area; or

(C) The solicitation is for the sale of property of a kind that
the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private
business owned or operated by the person to which the
subordinate public official or public employee has come on his
or her own initiative.

(o) The commission may, by legislative rule promulgated
in accordance with chapter twenty-nine-a of this code, define
further exemptions from this section as necessary or appropri-
ate.
CHAPTER 8A. LAND USE PLANNING.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-4. County planning commission.
§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.


1 (a) A municipal planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

2 (b) The members of a municipal planning commission must be:

3 (1) Residents of the municipality; and

4 (2) Qualified by knowledge and experience in matters pertaining to the development of the municipality.

5 (c) At least three fifths of all of the members must have been residents of the municipality for at least three years prior to nomination or appointment and confirmation.

6 (d) The members of a municipal planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. One member must be a member of the municipal governing body or a designee and one member must be a member of the administrative department of the municipality or a designee. The term of membership for these two members is the same as their term of office.

7 (e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in
businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of subsection (g), section five, article two, chapter six-b of this code if the member recuses himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue: Provided, That such members do not constitute a majority of the members of the planning commission at the same time.

(g) The remaining members of the municipal planning commission first selected shall serve respectively for terms of
one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(h) The members of a municipal planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(i) Nominations for municipal planning commission membership shall be made by the administrative authority and confirmed by the governing body when the administrative authority and the governing body are separate, or appointed and confirmed by the governing body where the administrative authority and governing body are the same.

(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(k) The governing body of the municipality may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

§8A-2-4. County planning commission.

(a) A county planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.
(b) The members of a county planning commission must be:

(1) Residents of the county; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the county.

(c) At least three fifths of all of the members must have been residents of the county for at least three years prior to appointment and confirmation by the county commission.

(d) The members of a county planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. One member must be a member of the county commission or a designee. The term of membership for this member is the same as the term of office.

(e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or
herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of subsection (g), section five, article two, chapter six-b of this code if the member recuses himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue: Provided, That such members do not constitute a majority of the members of the planning commission at the same time.

(g) The remaining members of the county planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(h) The members of a county planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(i) Appointments for county planning commission membership shall be made and confirmed by the county commission.
(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(k) The county commission may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.

(a) A multicounty planning commission, a regional planning commission or a joint planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must be:

(1) Residents of the jurisdiction of the multicounty planning commission, regional planning commission or joint planning commission; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the jurisdiction.

(c) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must equally represent the jurisdictions in the planning commission and must have been residents of the jurisdiction he
or she represents for at least three years prior to appointment and confirmation.

(d) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. Each governing body participating in the planning commission must have one member from its governing body on the planning commission. The term of membership for this member is the same as the term of office.

(e) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses that regularly conduct business in front of or with planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be disqualified from serving as a member because of a conflict of interest as defined in section fifteen, article ten, chapter sixty-one of this code and shall not be subject to prosecution under provisions of that chapter when the violation is created solely as a result of his or her relationship with the business. This member must recuse himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue.

(f) The Legislature finds that there are persons willing to serve on planning commissions who may also own interests in businesses who regularly conduct business in front of or with
planning commission staff. Such persons may have experience and expertise which would be valuable assets to a planning commission. For those reasons, notwithstanding any other provisions in this code to the contrary, any person employed by, owning an interest in or otherwise associated with a business that regularly conducts business in front of or with planning commission staff may also serve as a member of a planning commission and shall not be in violation of subsection (g), section five, article two, chapter six-b of this code if the member recuses himself or herself from any vote, discussion, participation or other activity regarding the conflicting issue: 

Provided, That such members do not constitute a majority of the members of the planning commission at the same time.

(g) The remaining members of the multicounty planning commission, regional planning commission or joint planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(h) The members of a multicounty planning commission, a regional planning commission or a joint planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(i) Appointments for a multicounty planning commission, a regional planning commission or a joint planning commission membership shall be made and confirmed by each governing body participating in the planning commission.

(j) An individual may serve as a member of a municipal planning commission, a county planning commission, a
multicounty planning commission, a regional planning
commission or a joint planning commission, at the same time.

(k) The governing bodies may establish procedures for the
removal of members of the planning commission for inactivity,
neglect of duty or malfeasance. The procedures must contain
provisions requiring that the person to be removed be provided
with a written statement of the reasons for removal and an
opportunity to be heard on the matter.

CHAPTER 177

(H. B. 4651 — By Mr. Speaker, Mr. Kiss)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §18B-11B-1,
§18B-11B-2, §18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-
11B-6, all relating to continuing the statewide poison center
generally; setting forth legislative findings; providing for the
continuation of the poison center as the West Virginia Poison
Control Center; requiring certification; establishing an advisory
board; providing for an annual report; setting forth certain
responsibilities of the West Virginia Poison Control Center;
setting forth certain powers and responsibilities of the director of
the center; and providing for general immunity for the center and
its employees for actions taken in good faith.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18B-11B-1, §18B-11B-2,
§18B-11B-3, §18B-11B-4, §18B-11B-5 and §18B-11B-6, all to read as follows:

ARTICLE 11B. WEST VIRGINIA POISON CENTER.

§18B-11B-1. Intent.
§18B-11B-2. West Virginia poison center continued; certification.
§18B-11B-3. Advisory Board.
§18B-11B-4. Center responsibilities.
§18B-11B-5. Powers and responsibilities of the director.
§18B-11B-6. Immunity of center and staff.

§18B-11B-1. Intent.

The Legislature hereby finds that the current level of scientific information regarding the chemicals, hazardous and noxious substances, biochemical agents, toxic household products and various combinations of them that lead to human poisoning with the added risks associated with criminal activity and clandestine terrorism involving toxic materials and agents requires the immediate availability of accurate information, resources and services to assess toxic threats to the public, prevent human poisoning and assist the general public, the police, firefighters, public health officials, emergency service workers, health care providers and other first responding emergency personnel.

It is the intent of the Legislature that poison control services be provided throughout the state on a consistent and prompt basis by any and all electronic means as well as by a toll free telephone network in order that illness or death that may result from the exposure of an individual to poisonous substances may be avoided. The Legislature also finds that the West Virginia Poison Center located at the Robert C. Byrd Health Sciences Center, West Virginia University, Charleston Division and operated by West Virginia University meets these criteria and is hereby continued as the West Virginia Poison Center.
The Legislature further finds that effective poison control, not only saves lives and protects the public welfare but also reduces emergency medical costs and is considered an essential emergency service.

§18B-11B-2. West Virginia Poison Center continued; certification.

(a) The West Virginia Poison Center (hereinafter referred to as “the Center”) currently a part of and located at the Robert C. Byrd Health Sciences Center, West Virginia University, Charleston Division and operated by West Virginia University, is hereby continued as a special service under West Virginia University.

(b) The center shall be certified by the American Association of Poison Centers or other similar organization with the same or higher certification standards, and shall have a director who is a board certified toxicologist.

(c) The West Virginia Poison Center is exempt from temporary budget hiring freezes that may apply to colleges and universities under the Higher Education Policy Commission.

§18B-11B-3. Advisory Board.

There is hereby created the West Virginia Poison Center Advisory Board (hereinafter referred to as the board). The board shall be composed of eight members. The members include: The Chancellor of the West Virginia Higher Education Policy Commission or his or her designee; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; the Commissioner of the Bureau for Public Health or his or her designee; the Associate Vice President of West Virginia University, Health Sciences Center, West Virginia University, Charleston, West Virginia, who shall be chairman of the board; the president of the West Virginia Hospital
Association or his or her designee; two members appointed by the Director of the Poison Center who shall represent professional health care organizations in this state with extensive experience in public health education, research or administration; and one member appointed by the Director of the Poison Center to represent the general public. All appointed members shall serve terms of four years and may be reappointed.

Appointed members of the advisory board shall serve without compensation, but may be reimbursed for any necessary and reasonable expenses incurred in attending meetings on the same basis as members of the Legislature are reimbursed for expenses.

The board shall provide advice and assistance to the director of the center in providing services as set out in this article. The board shall meet not less than two times each year on the call of the chair. Not later than the first day of July of each year, the board shall prepare an annual report for the calendar year for submission to the Governor and the Legislature. The report shall include an analysis of the activities of the center and any recommendations for improvement the board may deem necessary or appropriate.

§18B-11B-4. Center responsibilities.

The center shall provide:

(1) Twenty-four hour, seven days a week emergency telephone management and treatment referral of victims of poisoning to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required and carrying out telephone follow-up to families and other individuals to assure that adequate care is provided;

(2) Emergency telephone treatment recommendations for all types of poisonings, chemical exposures, drug overdoses and
exposure to weapons of mass destruction. This information shall be provided to medical and nonmedical providers;

(3) Telephone follow-up for hospitalized and nonhospitalized patients to assess progress and recommend additional treatment as necessary;

(4) Surveillance of human poison exposures. This includes those related chemicals, drugs, biologicals and weapons of mass destruction;

(5) Community education in poison prevention; and

(6) Education in the recognition and management of poisonings for health care providers.

§18B-11B-5. Powers and responsibilities of the director.

The Director of the West Virginia Poison Center:

(1) Shall ensure that the center is certified by the American Association of Poison Control Centers and remains in good standing with that organization;

(2) Is authorized to enter into agreements with other state agencies or departments, with public or private colleges or universities, schools of medicine or hospitals for the use of laboratories, personnel, equipment and other fixtures, facilities or services;

(3) May accept federal funds granted by the United States Congress or by executive order of the President of the United States as well as gifts, grants, endowments and donations from individuals and private organizations or foundations for all or any of the functions of the center;

(4) Develop and advocate for an annual budget for the center;
17 (5) Maintain a central office at the current location of the center; and

19 (6) Employ adequate professional and technical employees to meet the requirements of this article.

§18B-11B-6. Immunity of center and staff.

Neither the director nor any employee of the center staff shall be considered a member of any patient treatment team, or acting in concert with any responsible treating entity, including emergency personnel, hospital or clinic employees, or private medical practitioners of any health care treatment team.

The center and its employees are immune from any and all liability arising from the good faith provision of services provided under the provisions of this article. The immunity granted by this section is in addition to any other immunity now existing or granted under any other provision of this code or by common law.

CHAPTER 178
(Com. Sub. for S. B. 511 — By Senators Foster, McCabe, Harrison, Sprouse and Barnes)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, all relating to municipal policemen’s and firemen’s pension and relief funds; allowing increases for employee contributions; allowing the basis for
calculating alternative contributions to be modified; and allowing increases for municipal contributions.

Be it enacted by the Legislature of West Virginia:

That §8-22-19 and §8-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund.

§8-22-19. Levy to maintain fund.

(a) (1) The provisions of this subsection shall remain in effect through the thirtieth day of June, one thousand nine hundred eighty-three.

(2) In every municipality in which there is a policemen’s pension and relief fund or a firemen’s pension and relief fund, or both, the same shall be maintained as follows: The governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting the amount of the contributions received during such year from the members of the respective paid police department or paid fire department, provide funds equal to the sum of: (1) The full amount of estimated expenditures of the boards of trustees of the respective funds; and (2) an additional amount equal to ten percent of the estimated expenditures, said ten percent amount to be taken, accumulated and invested, if
possible, as surplus reserve: Provided, That in no event shall the
levy for each of the respective boards of trustees be less than
one cent nor more than eight cents on each one hundred dollars
of all real and personal property as listed for taxation in the
municipality: Provided, however, That in the event that the
funds derived above are not sufficient to meet the annual
expenditures and the surplus reserve funds for any fiscal year
do not contain a sufficient balance to maintain full retirement
benefits for that fiscal year, the municipality shall for only that
fiscal year levy an amount not to exceed an additional two cents
on each one hundred dollars of all real and personal property
listed for taxation in such municipality: Provided further, That
in the event that a municipality is required to levy an amount
for any fiscal year in excess of eight cents on each one hundred
dollars of all real and personal property as provided above, the
municipality shall assess and collect for only that fiscal year
from each member an additional amount of one percent of the
actual salary or compensation for each one cent that the
municipality has levied in excess of the eight cents which shall
become a required part of the pension and relief fund to which
the member belongs.

(3) The levies authorized under the provisions of this
section, or any part of them, may by the governing body be laid
in addition to all other municipal levies, and to that extent,
beyond the limit of levy imposed by the charter of the munici-
pality; and the levies shall supersede and if necessary exclude
levies for other purposes if priority or exclusion is necessary
under limitations upon taxes or tax levies imposed by law.

(4) The public corporations are authorized to take by gift,
grant, devise or bequest, any money or real or personal
property, upon such terms as to the investment and expenditures
thereof as may be fixed by the grantor or determined by the
trustees.
(5) In addition to all other sums provided for pensions in this section, it shall be the duty of every municipality in which any policemen’s pension and relief fund or firemen’s pension and relief fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of six percent of the actual salary or compensation of the member; and the amount so collected shall become a regular part of the policemen’s pension and relief fund, if collected from a policeman, and of the firemen’s pension and relief fund, if collected from a fireman.

(b) (1) After the thirtieth day of June, one thousand nine hundred eighty-three: In order for a municipal policemen’s or firemen’s pension and relief fund to receive the allocable portion of moneys from the municipal pensions and protection fund established in section fourteen-d, article three, chapter thirty-three of this code, the governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies, and include within the maximum levy or levies permitted by law, and if necessary in excess of any charter provision, a tax at such rate as will, after crediting: (A) The amount of the contributions received during the year from the members of the respective paid police department or paid fire department; and (B) the allocable portion of the municipal pensions and protection fund established in section fourteen-d, article three, chapter thirty-three of this code provide funds equal to the amount necessary to meet the minimum standards for actuarial soundness as provided in section twenty of this article, said amount to be irrevocably contributed, accumulated and invested as fund assets described in sections twenty-one and twenty-two of this article. The municipality contributions shall be deposited as fund assets on at least a quarterly basis and any revenues received from any source by a municipality which are specifically collected for the purpose of allocation for deposit into the policemen’s pension and relief fund or
firemen’s pension and relief fund shall be so deposited within thirty days of receipt by the municipality. Heretofore surplus reserves accumulated before the first day of July, one thousand nine hundred eighty-three, shall be irrevocably contributed, aggregated and invested as fund assets described in sections twenty-one and twenty-two of this article. Any actuarial deficiency arising under this section and section twenty of this article shall not be the obligation of the State of West Virginia.

(2) The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies, and to that extent, beyond the limit of levy imposed by the charter of the municipality; and the levies shall supersede and if necessary exclude levies for other purposes, where other purposes have not already attained priority, and within the limitations upon taxes or tax levies imposed by the constitution and laws.

(3) The public corporations are authorized to take by gift, grant, devise or bequest, any money or real or personal property, upon such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(4) Notwithstanding provisions in section six of this article, in addition to all other sums provided for pensions in this section, it is the duty of every municipality in which any fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of seven percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen’s pension and relief fund, if collected from a policeman, and of the firemen’s pension and relief fund, if collected from a fireman: Provided, That the board of trustees for each pension and relief fund may assess and collect from each member of the
paid police department or paid fire department or both each month not more than an additional two and one half percent of the actual salary or compensation of each member: Provided, however, That if any board of trustees decides to assess and collect any additional amount pursuant to this subdivision above the member contribution required by this section, then that board of trustees may not reduce the additional amount until the respective pension and relief fund no longer has any actuarial deficiency: Provided further, That if any board of trustees decides to assess and collect any additional amount, any board of trustees decision and any additional amount is not the liability of the State of West Virginia. Member contributions shall be deposited in the pension and relief fund on at least a monthly basis.

(5) For the fiscal year beginning on the first day of July, one thousand nine hundred eighty-three and for each fiscal year thereafter, the State Treasurer shall retain the allocable portion of the Municipal Pensions and Protection Fund, established in section fourteen-d, article three, chapter thirty-three of this code, until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to the State Auditor that:

(A) The municipality has irrevocably contributed the amount required under this section and section twenty of this article to the pension and relief fund for the fiscal year; and

(B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality on the condition of its fund with respect to the fiscal year.

(6) When the aforementioned application and certification are made the allocable portion of moneys from the Municipal Pensions and Protection Fund shall be paid to the corresponding policemen’s or firemen’s pension and relief fund.
(7) The State Auditor has the power and duty as the Auditor deems necessary to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and section twenty of this article. The expense of the audit or determination shall be paid from the portion of the municipal pensions and protection fund allocable to municipal policemen’s and firemen’s pension and relief funds. If the allocable portion of the Municipal Pensions and Protection Fund is not paid to the pension and relief fund within thirty-six months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen’s and firemen’s pension and relief funds in accordance with section fourteen-d, article three, chapter thirty-three of this code.


The board of trustees for each pension and relief fund shall have regularly scheduled actuarial valuation reports prepared by a qualified actuary. All of the following standards must be met:

(a) An actuarial valuation report shall be prepared at least once every three years commencing with the later of: (1) The first day of July, one thousand nine hundred eighty-three; or (2) three years following the most recently prepared actuarial valuation report: Provided, That this most recently prepared actuarial valuation report meets all of the standards of this section.

(b) The actuarial valuation report shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided, or actuarial assumptions or methods; (4) the fre-
quency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund’s Auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; and (8) any other information the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c) (1) After the thirtieth day of June, one thousand nine hundred ninety-one, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from the first day of July, one thousand nine hundred ninety-one: Provided, That in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending one thousand nine hundred eighty-four, whichever is greater: Provided, however, That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than one hundred seven percent of the amount contributed in the prior fiscal year: Provided further, That in order to avoid penalizing municipalities and to provide flexibility when
making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: And provided further, That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality’s required minimum under the alternative contribution plan authorized in this subsection: And provided further, That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: And provided further, That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: And provided further, That any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in subdivision (4), subsection (b), section nineteen of this article, then the board of trustees is not eligible to receive funds allocated under section fourteen-d, article three, chapter thirty-three of this code: And provided further, That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive fifteen-year period. For purposes of determining this minimum financial objective: (i) The value of the fund’s assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary’s best estimate of anticipated experience under the fund: And provided further, That any municipality which elected the alternative funding method under this section
and which has an unfunded actuarial liability of not more than twenty-five percent of fund assets, may, beginning the first day of September, two thousand three, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under section fourteen-d, article three, chapter thirty-three of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years, beginning from the first day of July, one thousand nine hundred ninety-one.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or firemen’s pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to the fund an amount which may not be less than the normal cost, as determined by the actuarial report.

(d) For purposes of this section the term “qualified actuary” means only an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and member’s beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his or her opinion the technique and assumptions used are reasonable and meet the requirements of this section of this article.
(e) The cost of the preparation of the actuarial valuation report shall be paid by the fund.

(f) Notwithstanding any other provision of this section, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, the municipality may calculate its annual contribution based upon the provisions of the supplemental benefit provided in this article enacted during the one thousand nine hundred ninety-one regular session of the Legislature.

CHAPTER 179

(H. B. 4850 — By Delegates Beane, Ennis and Frich)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §30-1A-2 and §30-1A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-1A-2a, all relating to expediting the sunrise application process.

Be it enacted by the Legislature of West Virginia:

That §30-1A-2 and §30-1A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-1A-2a, all to read as follows:

ARTICLE 1A. PROCEDURE FOR REGULATION OF OCCUPATIONS AND PROFESSIONS.

§30-1A-2. Required application for regulation of professional or occupational group.
§30-1A-2. Required application for regulation of professional or occupational group.

(a) Any professional or occupational group or organization, any individual or any other interested party which proposes the regulation of any unregulated professional or occupational group shall submit an application for regulation to the Joint Standing Committee on Government Organization, as set out in section two-a of this article. The Joint Standing Committee on Government Organization may only accept an application for regulation of a professional or occupational group when the party submitting an application files with the committee a statement of support for the proposed regulation which has been signed by at least ten residents or citizens of the State of West Virginia who are members of the professional or occupational group for which regulation is being sought.

(b) The completed application shall contain:

1. A description of the occupational or professional group proposed for regulation, including a list of associations, organizations and other groups currently representing the practitioners in this state, and an estimate of the number of practitioners in each group;

2. A definition of the problem and the reasons why regulation is deemed necessary;

3. The reasons why certification, registration, licensure or other type of regulation is being requested and why that regulatory alternative was chosen;

4. A detailed statement of the fee structure conforming with the statutory requirements of financial autonomy as set out in subsection (c), section six, article one, chapter thirty of this code;
(5) A detailed statement of the location and manner in which the group plans to maintain records which are accessible to the public as set out in section twelve, article one, chapter thirty of this code;

(6) The benefit to the public that would result from the proposed regulation; and

(7) The cost of the proposed regulation.

§30-1A-2a. Date applications are due and reporting date.

(a) For an application for regulation received after the first day of December and on or before the first day of June, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall present a report to the Joint Committee on Government Organization by the thirty-first day of December of that year.

(b) For an application for regulation received after the first day of June and on or before the first day of December, the Performance Evaluation and Research Division of the Office of the Legislative Auditor shall present a report to the Joint Committee on Government Organization by the thirtieth day of June of the next year.

§30-1A-3. Analysis and evaluation of application.

(a) The Joint Committee on Government Organization shall refer the completed application of the professional or occupational group to the Performance Evaluation and Research Division of the Office of the Legislative Auditor.

(b) The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall conduct an analysis and evaluation of the application. The analysis and evaluation shall be based upon the criteria listed in subsection (c) of this
section. The Performance Evaluation and Research Division of the Office of the Legislative Auditor shall submit a report, and such supporting materials as may be required, to the Joint Standing Committee on Government Organization, as set out in section two-a of this article.

(c) The report shall include evaluation and analysis as to:

(1) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(2) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence; and

(3) Whether the public can be adequately protected by other means in a more cost-effective manner.

CHAPTER 180

(S. B. 463 — By Senator Jenkins)

[Passed March 8, 2006; in effect from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to the modification of qualifications to obtain a license to practice medicine and surgery in the state.
Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

(a) The board shall issue a license to practice medicine and surgery or to practice podiatry to any individual who is qualified to do so in accordance with the provisions of this article.

(b) For an individual to be licensed to practice medicine and surgery in this state, he or she must meet the following requirements:

1. He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of medicine and surgery;

2. He or she must provide evidence of graduation and receipt of the degree of doctor of medicine or its equivalent from a school of medicine, which is approved by the liaison committee on medical education or by the board;

3. He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the accreditation council for graduate medical education; and

4. He or she must pass an examination approved by the board, which examination can be related to a national standard.
The examination shall be in the English language and be designed to ascertain an applicant’s fitness to practice medicine and surgery. The board shall before the date of examination determine what will constitute a passing score: Provided, That the board, or a majority of it, may accept in lieu of an examination of applicants the certificate of the national board of medical examiners: Provided, however, That the board is authorized to enter into reciprocity agreements with medical licensing authorities in other states, the District of Columbia, Canada or the Commonwealth of Puerto Rico and, for an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state or jurisdiction having reciprocity; (ii) has been engaged on a full-time professional basis in the practice of medicine within that state or jurisdiction for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction, the board may permit licensure in this state by reciprocity. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of medicine and surgery before being eligible for reexamination: Provided further, That an applicant is required to attain a passing score on all components or steps of the examination within a period of seven consecutive years: And provided further, That the board may, in its discretion, extend this period of seven consecutive years for up to three additional years for any medical student enrolled in a dual MD-PhD program or participating in an accredited fellowship training. The board need not reject a candidate for a nonmaterial technical or administrative error or omission in the application process that is unrelated to the candidate’s professional qualifications as long as there is sufficient information available to the board to determine the eligibility of the candidate for licensure.
(c) In addition to the requirements of subsection (b) of this section, any individual who has received the degree of doctor of medicine or its equivalent from a school of medicine located outside of the United States, the Commonwealth of Puerto Rico and Canada to be licensed to practice medicine in this state must also meet the following additional requirements and limitations:

1. He or she must be able to demonstrate to the satisfaction of the board his or her ability to communicate in the English language;

2. Before taking a licensure examination, he or she must have fulfilled the requirements of the educational commission for foreign medical graduates for certification, or he or she must provide evidence of receipt of a passing score on the examination of the educational commission for foreign medical graduates: Provided, That an applicant who: (i) Is currently fully licensed, excluding any temporary, conditional or restricted license or permit, under the laws of another state, the District of Columbia, Canada or the Commonwealth of Puerto Rico; (ii) has been engaged on a full-time professional basis in the practice of medicine within the state or jurisdiction where the applicant is fully licensed for a period of at least five years; and (iii) is not the subject of any pending disciplinary action by a medical licensing board and has not been the subject of professional discipline by a medical licensing board in any jurisdiction is not required to have a certificate from the educational commission for foreign medical graduates;

3. He or she must submit evidence to the board of either: (i) Having successfully completed a minimum of two years of graduate clinical training in a program approved by the accreditation council for graduate medical education; or (ii) current certification by a member board of the American Board of Medical Specialties.
For an individual to be licensed to practice podiatry in this state, he or she must meet the following requirements:

(1) He or she shall submit an application to the board on a form provided by the board and remit to the board a reasonable examination fee, the amount of the reasonable fee to be set by the board. The application must, as a minimum, require a sworn and notarized statement that the applicant is of good moral character and that he or she is physically and mentally capable of engaging in the practice of podiatric medicine;

(2) He or she must provide evidence of graduation and receipt of the degree of doctor of podiatric medicine and its equivalent from a school of podiatric medicine which is approved by the council of podiatry education or by the board;

(3) He or she must pass an examination approved by the board, which examination can be related to a national standard. The examination shall be in the English language and be designed to ascertain an applicant’s fitness to practice podiatric medicine. The board shall before the date of examination determine what will constitute a passing score. If an applicant fails to pass the examination on two occasions, he or she shall successfully complete a course of study or training, as approved by the board, designed to improve his or her ability to engage in the practice of podiatric medicine, before being eligible for reexamination: Provided, That an applicant is required to attain a passing score on all components or steps of the examination within a period of seven consecutive years; and

(4) He or she must submit evidence to the board of having successfully completed a minimum of one year of graduate clinical training in a program approved by the council on podiatric medical education or the colleges of podiatric medicine. The board may consider a minimum of two years of graduate podiatric clinical training in the U. S. armed forces or
three years’ private podiatric clinical experience in lieu of this requirement.

(e) Notwithstanding any of the foregoing, the board may grant licenses to an applicant in extraordinary circumstances under the following conditions:

(1) Upon a finding by the board that based on the applicant’s exceptional education, training and practice credentials, the applicant’s practice in the state would be beneficial to the public welfare;

(2) Upon a finding by the board that the applicant’s education, training and practice credentials are substantially equivalent to the requirements of licensure established in this article;

(3) That a license granted under these extraordinary circumstances is approved by a vote of three fourths of the members of the board;

(4) That orders denying applications for a license under this subsection are not appealable;

(5) That the board report to the President of the Senate and the Speaker of the House of Delegates all decisions made pursuant to this subsection and the reasons for those decisions; and

(6) That the provisions of this subsection exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished by an act of the Legislature.

(f) All licenses to practice medicine and surgery granted prior to the first day of July, one thousand nine hundred ninety-one, and valid on that date shall continue in full effect for the term and under the conditions provided by law at the
time of the granting of the license: *Provided*, That the provi-
sions of subsection (d) of this section do not apply to any
person legally entitled to practice chiropody or podiatry in this
state prior to the eleventh day of June, one thousand nine
hundred sixty-five: *Provided, however*, That all persons
licensed to practice chiropody prior to the eleventh day of June,
one thousand nine hundred sixty-five, shall be permitted to use
the term “chiropody-podiatry” and shall have the rights,
privileges and responsibilities of a podiatrist set out in this
article.

(g) The board may not issue a license to a person whose
license has been revoked or suspended in another state until
reinstatement of his or her license in that state.

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CHAPTER 181

*(Com. Sub. for H. B. 4661 — By Delegates Mahan and Amores)*

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §30-7C-7 of the Code of West
Virginia, 1931, as amended, relating to continuing Board of
Registered Professional Nurses emergency rule relating to
dialysis technicians.

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

That §30-7C-7 of the Code of West Virginia, 1931, as amended,
be amended and reenacted, to read as follows:

ARTICLE 7C. DIALYSIS TECHNICIANS.
§30-7C-7. Powers and duties of Board; rule-making authority.

(a) The Board may:

1. Adopt and amend rules consistent with this article necessary to enable it to carry into effect the provisions of this article, including disciplinary rules;

2. Prescribe standards for preparing individuals for the role of dialysis technician under this article;

3. Provide for standards for approved dialysis technician training programs;

4. Accredit educational programs for the preparation of dialysis technicians that meet the requirements of this article;

5. Provide surveys of educational programs when the Board considers it necessary;

6. Approve, reapprove and prescribe standards for testing organizations and the tests offered by organizations for dialysis technicians;

7. Deny or withdraw approval of testing organizations;

8.Prescribe standards for dialysis technician trainees;

9. Issue, renew or revoke temporary permits, endorsements and certifications for dialysis technicians;

10. Deny or withdraw accreditation of approved dialysis technician training programs for failure to meet or maintain prescribed standards required by this article and by the Board;

11. Conduct hearings upon charges calling for discipline of a dialysis technician;
(12) Keep a record of all proceedings of the Board; and

(13) Further regulate, as necessary, dialysis technicians: Provided, That the Board is not authorized to establish staffing ratios.

(b) The Board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of the code to:

(1) Prescribe standards for training programs;

(2) Prescribe testing standards and requirements;

(3) Prescribe requirements for persons and organizations providing training programs and testing services;

(4) Assess fees for the certification of dialysis technicians, approval of training programs, tests and providers of training programs and testing services, and other services performed by the Board; and

(5) Provide for any other requirements necessary to carry out the purposes of this article.

(c) The Board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the purposes set forth in this section. Notwithstanding the provisions of section fifteen, article three, chapter twenty-nine-a of this code to the contrary, the legislative rule proposed by the Board of Registered Professional Nurses entitled “Dialysis Technicians”, [19CSR13] and authorized as an emergency rule by the Secretary of State on the fifth day of August, two thousand five, shall continue in full force and effect as an emergency rule until the first day of July, two thousand seven, unless disapproved or authorized as a legislative rule, or otherwise amended by an Act of the Legislature.
AN ACT to amend and reenact §30-14A-1 of the Code of West Virginia, 1931, as amended, relating to osteopathic physician assistants; allowing an osteopathic physician and surgeon to supervise up to three physician assistants generally; and providing for legislative and emergency rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-14A-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of "osteopathic physician assistant";
unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

(a) As used in this section:

(1) "Osteopathic physician assistant" means an assistant to an osteopathic physician who is a graduate of an approved program of instruction in primary care or surgery, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of an osteopathic physician;

(2) "Supervising physician" means a doctor of osteopathy permanently licensed in this state who assumes legal and supervising responsibility for the work or training of any osteopathic physician assistant under his or her supervision;

(3) "Approved program" means an educational program for osteopathic physician assistants approved and accredited by the committee on allied health education and accreditation or its successor;

(4) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician’s office; and

(5) "Direct supervision" means the presence of the supervising physician at the site where the osteopathic physician assistant performs medical duties.

(b) The board shall promulgate legislative and emergency rules governing the extent to which osteopathic physician assistants may function in this state. Such rules shall provide that the osteopathic physician assistant is limited to the performance of those services for which he or she is trained and that he or she performs only under the supervision and control of an osteopathic physician permanently licensed in this state,
but such supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the osteopathic physician assistant’s normal place of employment is on the premises of the supervising physician. The supervising physician may send the osteopathic physician assistant off the premises to perform duties under his or her direction, but a separate place of work for the osteopathic physician assistant shall not be established. In promulgating such rules, the board may allow the osteopathic physician assistant to perform those procedures and examinations and in the case of authorized osteopathic physician assistants to prescribe at the direction of his or her supervising physician in accordance with subsection (o) of this section those categories of drugs submitted to it in the job description required by subsection (e) of this section. The board shall compile and publish an annual report that includes a list of currently certified osteopathic physician assistants and their employers and location in the state.

(c) The board shall certify as an osteopathic physician assistant any person who files an application and furnishes satisfactory evidence to it that he or she has met the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery;

(2) He or she has passed the examination for a primary care physician assistant or surgery administered by the national board of medical examiners on behalf of the national commission on certification of physician assistants; and

(3) He or she is of good moral character.

(d) When any graduate of an approved program submits an application to the board, accompanied by a job description in conformity with subsection (e) of this section, for an osteo-
61 pathic physician assistant certificate, the board may issue to
62 such applicant a temporary certificate allowing such applicant
63 to function as an osteopathic physician assistant for the period
64 of one year. Said temporary certificate may be renewed for one
65 additional year upon the request of the supervising physician.
66 An osteopathic physician assistant who has not been certified
67 as such by the national board of medical examiners on behalf of
68 the national commission on certification of physician assistants
69 will be restricted to work under the direct supervision of the
70 supervising physician.

(e) Any osteopathic physician applying to the board to
71 supervise an osteopathic physician assistant shall provide a job
72 description that sets forth the range of medical services to be
73 provided by such assistant. Before an osteopathic physician
74 assistant can be employed or otherwise use his or her skills, the
75 supervising physician must obtain approval of the job descrip-
76 tion from the board. The board may revoke or suspend any
77 certification of an assistant to a physician for cause, after giving
78 such person an opportunity to be heard in the manner provided
79 by sections eight and nine, article one of this chapter.

(f) The supervising physician is responsible for observing,
80 directing and evaluating the work records and practices of each
81 osteopathic physician assistant performing under his or her
82 supervision. He or she shall notify the board in writing of any
83 termination of his or her supervisory relationship with an
84 osteopathic physician assistant within ten days of his or her
85 termination. The legal responsibility for any osteopathic
86 physician assistant remains with the supervising physician at all
87 times, including occasions when the assistant, under his or her
88 direction and supervision, aids in the care and treatment of a
89 patient in a health care facility. In his or her absence, a
90 supervising physician must designate an alternate supervising
physician; however, the legal responsibility remains with the supervising physician at all times. A health care facility is not legally responsible for the actions or omissions of an osteopathic physician assistant unless the osteopathic physician assistant is an employee of the facility.

(g) The acts or omissions of an osteopathic physician assistant employed by health care facilities providing inpatient services shall be the legal responsibility of said facilities. Osteopathic physician assistants employed by such facilities in staff positions shall be supervised by a permanently licensed physician.

(h) A health care facility shall report in writing to the board within sixty days after the completion of the facility’s formal disciplinary procedure, and also after the commencement, and again after the conclusion, of any resulting legal action, the name of any osteopathic physician assistant practicing in the facility whose privileges at the facility have been revoked, restricted, reduced or terminated for any cause including resignation, together with all pertinent information relating to such action. The health care facility shall also report any other formal disciplinary action taken against any osteopathic physician assistant by the facility relating to professional ethics, medical incompetence, medical malpractice, moral turpitude or drug or alcohol abuse. Temporary suspension for failure to maintain records on a timely basis or failure to attend staff or section meetings need not be reported.

(i) When functioning as an osteopathic physician assistant, the osteopathic physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(j) (1) A supervising physician shall not supervise at any time more than three osteopathic physician assistants, except
that a physician may supervise up to four hospital-employed osteopathic physician assistants: Provided, That an alternative supervisor has been designated for each.

(2) An osteopathic physician assistant shall not perform any service that his or her supervising physician is not qualified to perform.

(3) An osteopathic physician assistant shall not perform any service that is not included in his or her job description and approved by the board as provided for in this section.

(4) The provisions of this section do not authorize an osteopathic physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, registered nurses, licensed practical nurses, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(k) Each job description submitted by a licensed osteopathic supervising physician shall be accompanied by a fee of one hundred dollars. A fee of fifty dollars shall be charged for the annual renewal of the certificate. A fee of twenty-five dollars shall be charged for any change of supervising physician.

(l) As a condition of renewal of osteopathic physician assistant certification, each osteopathic physician assistant shall provide written documentation satisfactory to the board of participation in and successful completion of continuing education in courses approved by the board of osteopathy for the purposes of continuing education of osteopathic physician assistants. The osteopathy board shall promulgate legislative rules for minimum continuing hours necessary for certification renewal. These rules shall provide for minimum hours equal to
or more than the hours necessary for national certification.

Notwithstanding any provision of this chapter to the contrary, failure to timely submit such required written documentation shall result in the automatic suspension of any certification as an osteopathic physician assistant until such time as the written documentation is submitted to and approved by the board.

(m) It is unlawful for any person who is not certified by the board as an osteopathic physician assistant to use the title of “osteopathic physician assistant” or to represent to any other person that he or she is an osteopathic physician assistant. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two thousand dollars.

(n) It is unlawful for any osteopathic physician assistant to represent to any person that he or she is a physician. Any person who violates the provisions of this subsection is guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary for not less than one, nor more than two years, or be fined not more than two thousand dollars, or both fined and imprisoned.

(o) An osteopathic physician assistant providing primary care outpatient services in a medically underserved area or other area of need, both as defined by the board, may write or sign prescriptions or transmit prescriptions by word of mouth, telephone or other means of communication at the direction of his or her supervising physician. The board shall promulgate rules and regulations governing the eligibility and extent to which such an osteopathic physician assistant may prescribe at the direction of the supervising physician. The regulations shall provide for a state formulary classifying pharmacologic categories of drugs which may be prescribed by such an osteopathic physician assistant. In classifying such pharmaco-
logic categories, those categories of drugs which shall be excluded shall include, but not be limited to, Schedules I and II of the uniform controlled substances act, anticoagulants, antineoplastics, antipsychotics, radiopharmaceuticals, general anesthetics and radiographic contrast materials. Drugs listed under Schedule III shall be limited to a forty-eight hour supply without refill. The regulations shall provide that all pharmacological categories of drugs to be prescribed by an osteopathic physician assistant shall be listed in each job description submitted to the board as required in subsection (e) of this section. The regulations shall provide the maximum dosage an osteopathic physician assistant may prescribe.

The regulations shall also provide that to be eligible for such prescription privileges, an osteopathic physician assistant must submit an application to the board for such privileges. The regulations shall also provide that an osteopathic physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of said application for prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board. The regulations shall also provide that to maintain prescription privileges, an osteopathic physician assistant shall continue to maintain national certification as an osteopathic physician assistant, and in meeting such national certification requirements shall complete a minimum of ten hours of continuing education in rational drug therapy in each certification period. Nothing in this subsection shall be construed to permit an osteopathic physician assistant to independently prescribe or dispense drugs.
CHAPTER 183

(Com. Sub. for H. B. 4276 — By Delegates Beane, Ennis, Barker, Butcher, Hatfield, Porter, Schoen and Walters)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §30-22-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §30-22-1, §30-22-2, §30-22-3, §30-22-4, §30-22-5, §30-22-6, §30-22-7, §30-22-8, §30-22-9, §30-22-10, §30-22-11, §30-22-12, §30-22-13, §30-22-14, §30-22-15, §30-22-16, §30-22-17 and §30-22-18; and to amend said code by adding thereto eleven new sections, designated §30-22-19, §30-22-20, §30-22-21, §30-22-22, §30-22-23, §30-22-24, §30-22-25, §30-22-26, §30-22-27, §30-22-28 and §30-22-29, all relating to updating the regulation of the practice of landscape architecture; definitions; board composition; powers and duties of the board; clarifying rulemaking authority; license, temporary permit and certificate of authorization requirements; exemptions; hearing and notice requirements; providing a civil cause of action; criminal penalties; and continuation of the board.

Be it enacted by the Legislature of West Virginia:

§30-22-25, §30-22-26, §30-22-27, §30-22-28 and §30-22-29, all to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-1. License required to practice.
§30-22-2. Unlawful acts.
§30-22-3. Applicable law.
§30-22-4. Definitions.
§30-22-5. Board of Landscape Architects.
§30-22-6. Powers and duties of the board.
§30-22-8. Fees; special revenue account; administrative fines.
§30-22-10. License requirements.
§30-22-11. License from another jurisdiction; license to practice in this state.
§30-22-12. License renewal requirements.
§30-22-13. Inactive license requirements.
§30-22-14. Retired license requirements.
§30-22-17. Display of license.
§30-22-18. Seal requirements.
§30-22-20. Certificate of authorization renewal requirements.
§30-22-22. Exemptions from article.
§30-22-23. Refusal to issue or renew, suspension or revocation; disciplinary action.
§30-22-24. Complaints; investigations; notice.
§30-22-25. Hearing and judicial review.
§30-22-26. Injunctions.
§30-22-27. Criminal proceedings; penalties.
§30-22-29. Continuation of West Virginia Board of Landscape Architects.

§30-22-1. License required to practice.

The practice of landscape architecture requires education, training and experience and should only be practiced by a licensed landscape architect. Therefore, the Legislature finds that in order to protect the health, safety, interest and welfare of
the public and to provide for the regulation of landscape architecture in this state, a person must have a license, as provided in this article, to practice as a landscape architect.

§30-22-2. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice landscape architecture in this state without a license issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that the person is a licensed landscape architect, unless such person has been duly licensed under the provisions of this article.

(b) It is unlawful for any firm to practice or offer to practice landscape architecture in this state without a certificate of authorization issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that it is a landscape architectural firm, unless such firm has been issued a certificate of authorization under the provisions of this article.

§30-22-3. Applicable law.

The practice of landscape architecture and the Board of Landscape Architects are subject to the provisions of article one of this chapter and the provisions of this article and any rules promulgated thereunder.

§30-22-4. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Accredited” means a school, college or university accredited by the Landscape Architectural Accreditation Board (LAAB) or any other accrediting body recognized by the board.
(b) “Applicant” means a person making application for a license or a permit, or a firm making application for a certificate of authorization, under the provisions of this article.

(c) “Board” means the West Virginia Board of Landscape Architects.

(d) “Certificate of authorization” means a certificate issued under the provisions of this article to a firm providing landscape architectural services.

(e) “Certificate of authorization holder” means a firm certified under the provisions of this article to provide landscape architectural services.

(f) “Examination” means the examination in landscape architecture required for licensure.

(g) “Firm” means any business entity, partnership, association, company, corporation, limited partnership, limited liability company or other entity providing landscape architectural services.

(h) “Landscape architect” means a person licensed under the provisions of this article to practice landscape architecture.

(i) “Landscape architecture” means the analysis, planning, design, management and stewardship of the natural and built environments.

(j) “License” means a landscape architecture license issued under the provisions of this article.

(k) “Licensee” means a person holding a landscape architecture license issued under the provisions of this article.

(l) “Permittee” means a person holding a temporary permit.
(m) “Practice of landscape architecture” means the performance of professional services, including but not limited to, analysis, consultations, evaluations, research, planning, design, management or responsible supervision of projects principally directed at the functional, aesthetic use, preservation and stewardship of the land and natural and built environments, including:

(1) Investigation, selection and allocation of land and water resources for appropriate uses;

(2) Formulation of feasibility studies and graphic and written criteria to govern the planning, design and management of land and water resources;

(3) Preparation, review and analysis of those aspects of land use master plans, subdivision plans and preliminary plats as are related to landscape architecture;

(4) Determination of the location and siting of improvements, including buildings and other features, as well as the access and environs for those improvements associated with the practice of landscape architecture;

(5) Design of land forms, soil conservation and erosion control methods, site lighting, water features, irrigation systems, plantings, pedestrian and vehicular circulation systems and related construction details, and natural drainage, surface and ground water drainage systems: Provided, That such systems do not require structural design of system components or a hydraulic analysis of the receiving storm water conveyance system; and

(6) Preparation, filing and administration of plans, drawings, specifications and other related construction documents.
(n) “Temporary permit” means a permit to practice landscape architecture issued by the board for a period of time not to exceed one year.

§30-22-5. Board of Landscape Architects.

(a) The West Virginia Board of Landscape Architects is hereby continued and shall be composed of three members, two of whom must be licensed landscape architects, appointed by the Governor by and with the advice and consent of the Senate, for staggered terms of three years.

(b) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than three years and must have been a resident of this state for a period of not less than one year immediately preceding the appointment.

(c) Each member of the board must be a resident of this state during the appointment term.

(d) No member may serve more than three consecutive full terms and any member having served three consecutive full terms may not be appointed for one year after completion of his or her third full term. A member shall continue to serve until his or her successor has been appointed and qualified. Any member currently serving on the board on the effective date of this article may be reappointed in accordance with the provisions of this section.

(e) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(f) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.
(g) Any member of the board immediately and automatically forfeits his or her membership if he or she has his or her license to practice suspended or revoked by the board, is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(h) The board shall designate one of its members as chairperson and one member as secretary-treasurer who shall serve at the will of the board.

(i) Each member of the board is entitled to receive compensation and expense reimbursement in accordance with article one of this chapter.

(j) A majority of the members of the board shall constitute a quorum.

(k) The board shall hold at least one annual meeting. Other meetings shall be held at the call of the chairperson or upon the written request of two members, at such time and place as designated in the call or request.

§30-22-6. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter, and elsewhere in law.

(b) The board’s powers and duties include:

(1) Holding meetings, conducting hearings and administering examinations and reexaminations;

(2) Setting the requirements for a license, temporary permit and certificate of authorization;
(3) Establishing procedures for submitting, approving and rejecting applications for a license, temporary permit and certificate of authorization;

(4) Determining the qualifications of any applicant for a license, temporary permit and certificate of authorization;

(5) Preparing, conducting, administering and grading written, oral or written and oral examinations and reexaminations for a license;

(6) Contracting with third parties to prepare and/or administer the examinations and reexaminations required under the provisions of this article;

(7) Determining the passing grade for the examinations;

(8) Maintaining records of the examinations and reexaminations the board or a third party administers, including the number of persons taking the examination or reexamination and the pass and fail rate;

(9) Maintaining an accurate registry of names and addresses of all persons and firms regulated by the board;

(10) Defining, by legislative rule, the fees charged under the provisions of this article;

(11) Issuing, renewing, denying, suspending, revoking or reinstating licenses, temporary permits and certificates of authorization;

(12) Establishing, by legislative rule, the continuing education requirements for licensees;

(13) Suing and being sued in its official name as an agency of this state;
(14) Maintaining an office, and hiring, discharging, setting
the job requirements and fixing the compensation of employees
and investigators necessary to enforce the provisions of this
article;

(15) Investigating alleged violations of the provisions of
this article, the rules promulgated hereunder, and orders and
final decisions of the board;

(16) Conducting disciplinary hearings of all persons and
business entities regulated by the board;

(17) Setting disciplinary action and issuing orders;

(18) Instituting appropriate legal action for the enforcement
of the provisions of this article;

(19) Keeping accurate and complete records of its proceed-
ings, and certifying the same as may be appropriate;

(20) Proposing rules in accordance with the provisions of
article three, chapter twenty-nine-a of this code to implement
the provisions of this article; and

(21) Taking all other actions necessary and proper to
effectuate the purposes of this article.


(a) The board shall propose rules for legislative approval,
in accordance with the provisions of article three, chapter
twenty-nine-a of this code, to implement the provisions of this
article, including the establishment of:

(1) Standards and requirements for licensure, temporary
permits and certificates of authorization;

(2) Procedures for examinations and reexaminations;
(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements, and the passing grade on the examination for licensure;

(5) Procedures for the issuance and renewal of a license, temporary permit and certificate of authorization;

(6) A fee schedule: Provided, That the fee schedule in effect as of the first day of July, two thousand five, will remain in effect until amended, modified, repealed or replaced by the legislative rule promulgated pursuant to this subsection;

(7) Continuing education requirements for licensees;

(8) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee, permittee or certificate of authorization holder;

(9) Requirements for inactive or revoked licenses, temporary permits or certificates of authorization; and

(10) Any other rules necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this article shall remain in effect until they are amended, modified, repealed or replaced.

§30-22-8. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the “Board of Landscape Architects Fund,” which fund is hereby continued. The fund shall be used by the board for the administration of this article. Except as may be provided in article one of this
chapter, the board shall retain the amounts in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the general revenue fund.

(b) Any amounts received as fines imposed pursuant to this article shall be deposited into the general revenue fund of the State Treasury.


(a) An applicant for licensure under this article must have completed one of the following educational and/or experience requirements:

(1) Has a bachelor degree in landscape architecture from an accredited college or university and at least two years of experience in landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect;

(2) Has a graduate degree in landscape architecture from an accredited college or university and at least one year of experience in landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; or

(3) (A) Prior to the thirty-first day of December, two thousand six, has completed at least ten years of experience in landscape architecture, including at least six years of experience in landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect; or
(B) Prior to the thirty-first day of December, two thousand six, has begun the ten years of experience in landscape architecture set out in subdivision (3) (A) of this subsection, and has not completed the experience requirements prior to the thirty-first day of December, two thousand six, then the person must notify the board that he or she will be making application under this subdivision and comply with the procedures prescribed by the board; or

(C) On and after the first day of January, two thousand seven, has completed at least ten years of experience in landscape architecture under the supervision of a landscape architect or a person having qualifications acceptable to the board and similar to the qualifications of a landscape architect.

(b) An applicant for licensure under this article must pass the examination prescribed by the board.

§30-22-10. License requirements.

(a) The board shall issue a license to practice under the provisions of this article to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least eighteen years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Has not been convicted of a crime involving moral turpitude;

(5) Has not had his or her application for a license to practice as a landscape architect refused in any state of the United States;
(6) Has not had his or her license to practice landscape architecture suspended or revoked in any state of the United States; and

(7) Has completed the licensure requirements set out in this article and the rules promulgated hereunder.

(b) The board may issue a license to practice under the provisions of this article to an applicant who does not meet the licensure requirements set out in subdivisions (5) or (6) of subsection (a) of this section, but who does meet the licensure requirements established by rule by the board.

(c) An application for a license shall be made on forms prescribed by the board.

(d) An applicant shall pay all the applicable fees.

(e) A license to practice landscape architecture issued by the board prior to the first day of July, two thousand six, shall for all purposes be considered a license issued under this article: Provided, That a person holding a license to practice landscape architecture issued prior to the first day of July, two thousand six, must renew the license pursuant to the provisions of this article.

§30-22-11. License from another jurisdiction; license to practice in this state.

The board may issue a license to practice landscape architecture in this state, without requiring an examination, to an applicant of good moral character who holds a valid license or other authorization to practice landscape architecture from another jurisdiction, if the applicant:

(1) Holds a license or other authorization to practice landscape architecture in another jurisdiction and meets

requirements which are substantially equivalent to the licensure requirements set forth in this article;

(2) Is not currently being investigated by a disciplinary authority of this state or another jurisdiction, does not have charges pending against his or her license or other authorization to practice landscape architecture, and has never had a license or other authorization to practice landscape architecture revoked;

(3) Has not previously failed an examination for licensure in this state;

(4) Has paid all the applicable fees; and

(5) Has completed such other action as required by the board.

§30-22-12. License renewal requirements.

(a) A licensee shall, annually or biennially upon or before the first day of July, renew his or her license by completing a form prescribed by the board and paying a renewal fee.

(b) At least thirty days prior to the first day of July, either annually or biennially, the secretary-treasurer of the board shall mail to every licensee a notice of renewal, an application for renewal and a statement for the renewal fee.

(c) The board shall charge a fee for each renewal of a license and a late fee for any renewal not paid in a timely manner.

(d) The board shall require as a condition for the renewal of a license that each licensee complete continuing education requirements.
(e) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

§30-22-13. Inactive license requirements.

(a) A licensee who chooses not to continue in active practice and notifies the board in writing, may be granted inactive status.

(b) A person granted inactive status shall pay an inactive fee, is exempt from the continuing education requirements and cannot practice in this state.

(c) When an inactive licensee wants to return to active practice, he or she must complete all the continuing education requirements, pay all the applicable fees and meet all the other requirements prescribed by the board.

§30-22-14. Retired license requirements.

(a) A licensee who chooses to retire and notifies the board in writing, may be granted retired status.

(b) A person granted retired status cannot practice landscape architecture in this state.


The board may reinstate a license upon a showing that the applicant is qualified to resume practice. The applicant shall pay all applicable fees and shall meet all the requirements prescribed by the board.


(a) Upon proper application and payment of the applicable fees, the board may issue a temporary permit, for a period of
time not to exceed one year, to an applicant who has completed
the educational and/or experience requirements set out in this
article, but who has not taken the examination.

(b) The temporary permit expires thirty days after the board
gives written notice to the permittee of the results of the first
examination held following the issuance of the temporary
permit.

(c) The temporary permit may not be renewed nor another
temporary permit be issued to the same person.

(d) The temporary permit may be revoked for any reason
which would justify the suspension, revocation, limitation or
denial of a license.

§30-22-17. Display of license.

(a) The board shall prescribe the form for a license and may
issue a duplicate license, upon payment of a fee.

(b) A licensee shall conspicuously display his or her license
at his or her principal place of practice.

§30-22-18. Seal requirements.

(a) Each licensee must have a seal, authorized by the board,
which seal shall include the licensee’s name and the words:
“Professional Landscape Architect, State of West Virginia,”
and any other words or figures prescribed by the board.

(b) All working drawings and specifications prepared by a
licensee shall be signed and stamped with the licensee’s seal:
Provided, That nothing contained in this article shall be
construed to permit the seal of a landscape architect to serve as
a substitute for the seal of an architect, an engineer or a
professional surveyor whenever the seal of such architect, engineer or professional surveyor is required by law.

(c) It is unlawful for a person who is not licensed under the provisions of this article to affix a seal on a document.


(a) After the first day of July, two thousand six, a firm practicing landscape architecture in West Virginia shall have a certificate of authorization.

(b) The board shall issue a certificate of authorization to a firm that:

(1) Wants to practice landscape architecture in West Virginia;

(2) Provides proof that the firm employs a West Virginia licensed landscape architect;

(3) Has paid all applicable fees; and

(4) Completes such other requirements as specified by the board.

(c) The name of the employed licensee in direct control or having personal supervision of the practice of the firm shall appear as the landscape architect on all plans, drawings, specifications, reports or other instruments of service rendered or submitted by the firm.

§30-22-20. Certificate of authorization renewal requirements.

(a) A firm wanting to continue in active practice shall, annually or biennially upon or before the first day of July, renew its certificate of authorization and pay a renewal fee.
(b) At least thirty days prior to the first day of July, either annually or biennially, the secretary-treasurer of the board shall mail to every certificate of authorization holder a notice of renewal, an application for renewal and a statement for the renewal fee.

(c) The board shall charge a fee for each renewal of a certificate of authorization and a late fee for any renewal not paid in a timely manner.


(a) The board shall prescribe the form for a certificate of authorization, and may issue a duplicate certificate of authorization upon payment of a fee.

(b) A firm shall conspicuously display its certificate of authorization at its principal place of practice.

§30-22-22. Exemptions from article.

(a) Nothing in this article shall prohibit any professional engineer, professional surveyor, or forester licensed or registered under the provisions of this code from providing services for which they are licensed or registered.

(b) Nothing in this article shall prohibit any architect licensed or registered under the provisions of this code from performing any of the services included within the definition of the practice of landscape architecture as set forth in subsection (m), section four of this article when incidental to the practice of architecture as defined in article twelve of this chapter.

(c) Nothing in this article shall prohibit a nursery person, agriculturist, horticulturist, gardener, landscape designer, landscape contractor, grader, cultivator of land, garden or lawn caretaker from engaging in the occupation of growing or marketing nursery stock, preparing planting plans, installing
plant material, providing drawings or graphic diagrams necessary for the proper layout of goods or materials, or arranging for the installation of goods or materials on private or public land.

(d) Nothing in this article shall prohibit state, county, city or other municipal, urban or regional planners and designers from preparing plans or diagrams necessary to the planning, design and management of communities or regions.

(e) Nothing in this article shall prohibit an individual from making landscape plans, drawings or specifications for property owned, leased or rented by the individual for his or her personal use.

(f) Only licensed landscape architects shall use the title, “Landscape Architect”, or other similar words or titles which implies licensure.

§30-22-23. Refusal to issue or renew, suspension or revocation; disciplinary action.

(a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license, temporary permit, certificate of authorization or practice privilege and may take disciplinary action against a licensee, permittee or certificate of authorization holder who, after notice and a hearing, has been adjudged by the board as unqualified for any of the following reasons:

(1) Fraud, misrepresentation or deceit in obtaining or maintaining a license, temporary permit or certificate of authorization;

(2) Failure by any licensee, permittee or certificate of authorization holder to maintain compliance with the requirements for the issuance or renewal of a license, temporary permit or certificate of authorization;
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14 (3) Dishonesty, fraud, professional negligence in the
15 performance of landscape architectural services, or a willful
16 departure from the accepted standards of landscape architecture
17 and the professional conduct of landscape architects;

18 (4) Violation of any provision of this article or any rule
19 promulgated hereunder;

20 (5) Violation of any professional standard or rule of
21 professional conduct;

22 (6) Failure to comply with the provisions of this article or
23 any rule promulgated hereunder;

24 (7) Failure to comply with any order or final decision of the
25 board;

26 (8) Failure to respond to a request or action of the board;

27 (9) Conviction of a crime involving moral turpitude;

28 (10) Conviction of a felony or a crime involving dishonesty
29 or fraud or any similar crime under the laws of the United
30 States, this state or another jurisdiction, if the underlying act or
31 omission involved would have constituted a crime under the
32 laws of this state;

33 (11) Any conduct adversely affecting the licensee’s,
34 permittee’s or certificate of authorization holder’s fitness to
35 perform landscape architectural services; or

36 (12) Knowingly using any false or deceptive statements in
37 advertising.

38 (b) If the board suspends, revokes, refuses to issue, refuses
39 to renew or limits any license, temporary permit, certificate of
40 authorization or practice privilege, the board shall make and
enter an order to that effect and give written notice of the order to the person by certified mail, return receipt requested, which order shall include a statement of the charges setting forth the reasons for the action, and notice of the date, time and place of the hearing. If a license, temporary permit, certificate of authorization is ordered suspended or revoked, then the licensee, permittee or certificate of authorization holder shall, within twenty days after receipt of the order, return the license, temporary permit, certificate of authorization to the board. The hearing shall be held in accordance with the provisions of this article.

(c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fines, and mandatory attendance at continuing education seminars.

§30-22-24. Complaints; investigations; notice.

(a) The board may, on its own motion, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee, permittee or certificate of authorization holder. The board shall, upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for disciplinary action against a licensee, permittee or certificate of authorization holder.

(b) Upon receipt of a written complaint filed against any licensee, permittee or certificate of authorization holder, the board shall provide a copy of the complaint to the licensee, permittee or certificate of authorization holder.

(c) If the board finds, upon investigation, that probable cause exists that the licensee, permittee or certificate of authorization holder has violated any provision of this article or the rules promulgated hereunder, then the board shall serve the licensee, permittee or certificate of authorization holder with a
written statement of charges and a notice specifying the date, time and place of the hearing. The hearing shall be held in accordance with the provisions of this article.

§30-22-25. Hearing and judicial review.

(a) Any person adversely affected by an order entered by the board is entitled to a hearing. A hearing on a statement of the charges shall be held in accordance with the provisions for hearings set forth in article one of this chapter and the procedures specified by the board by rule.

(b) Any licensee, permittee or certificate of authorization holder, adversely affected by any decision of the board entered after a hearing, may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article five, chapter twenty-nine-a of this code.

§30-22-26. Injunctions.

(a) When, by reason of an investigation under this article or otherwise, the board or any other interested person believes that a person has violated or is about to violate any provision of this article, any rule promulgated hereunder, any order of the board or any final decision of the board, the board or any other interested person may apply to any court of competent jurisdiction for an injunction against such person enjoining such person from the violation. Upon a showing that the person has engaged in or is about to engage in any prohibited act or practice, an injunction, restraining order or other appropriate order may be granted by the court without bond.

(b) A cause of action by the board may be brought in the circuit court of the county where the cause of action took place.
§30-22-27. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated the provisions of this article, the board may bring its information to the attention of the Attorney General or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) If a court of law finds that a person knowingly violated any provision of this article, any rule promulgated hereunder, any order of the board or any final decision of the board, then the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars and no more than one thousand dollars for each violation, imprisoned for up to thirty days for each violation, or both fined and imprisoned.


In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-22-29. Continuation of West Virginia Board of Landscape Architects.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Landscape Architects shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, all relating to the Massage Therapy Licensure Board; discontinuing waiver of requirements for licensure; providing that board may require licensees formerly licensed by waiver to meet certain requirements to reinstate lapsed licenses; providing grounds for denial of renewal of licenses; prohibiting practicing under lapsed license; providing for disciplinary sanctions for certain prohibited acts; clarifying that students of massage therapy may not charge or receive fees; and increasing civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-37-7, §30-37-8, §30-37-9, §30-37-10 and §30-37-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.
§30-37-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.
§30-37-7. Requirements for licensure; renewal of licenses; reinstatement; penalties.

(a) The board shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, establishing a procedure for licensing of massage therapists. License requirements shall include the following:

1. Completion of a program of massage education at a school approved by the West Virginia Higher Education Policy Commission or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork. This school shall require a diploma from an accredited high school, or the equivalent, and require completion of at least five hundred hours of supervised academic instruction;

2. Successful completion of the National Certification for Therapeutic Massage and Bodywork (NCTMB) examination, or other board approved examination; and

3. Payment of a reasonable fee every two years required by the board which shall compensate and be retained by the board for the costs of administration.

(b) A license to practice massage therapy issued by the board prior to the first day of July, two thousand six, shall for all purposes be considered a license issued under this section: Provided, That a person holding a license to practice massage therapy issued prior to the first day of July, two thousand six, must renew the license pursuant to the provisions of this article: Provided, however, That a person whose license was issued by the board prior to the first day of July, two thousand six, and
whose license subsequently lapses may, in the discretion of the board, be subject to the licensing requirements of this section.

(c) In addition to provisions for licensure, the rules shall include:

(1) Requirements for completion of continuing education hours conforming to NCTMB guidelines; and

(2) Requirements for issuance of a reciprocal license to licensees of states with requirements which may include the successful completion of the NCTMB examination or other board approved examination.

(d) Subject to the provisions of subsection (b) of this section, the board may deny an application for renewal for any reason which would justify the denial of an application for initial licensure.

(e) Any person practicing massage therapy during the time his or her license has lapsed is in violation of this article and is subject to the penalties provided in this article.

(f) A massage therapist who is licensed by the board shall be issued a certificate and a license number. The current, valid license certificate shall be publicly displayed and available for inspection by the board and the public at a massage therapist's work site.


(a) The board has the power and authority to enter into any court of this state having proper jurisdiction to seek an injunction against any person, corporation or association not in compliance with the provisions of this article, and is further empowered to enter into any court to enforce the provisions of this article to ensure compliance with such provisions.
(b) The board may suspend, revoke, or impose probationary conditions upon a license or impose disciplinary sanctions upon a licensee pursuant to rules adopted in accordance with this article concerning board requirements for licensure. The following are grounds for revocation, suspension, annulment or the imposition of other disciplinary sanctions when a person, corporation or association is:

(1) Guilty of fraud in practice of massage, or fraud or deceit in the licensee’s application for licensure;

(2) Engaged in practice under a false or assumed name, or impersonating another practitioner of a like or different name;

(3) Addicted to the habitual use of drugs, alcohol or stimulants to an extent as to incapacitate that person’s performance of professional duties;

(4) Guilty of fraudulent, false, misleading or deceptive advertising, or for prescribing medicines or drugs, or practicing or offering to practice any licensed profession without legal authority. The licensee may not diagnose, or imply or advertise in any way a service for a condition that would require diagnosis;

(5) Practicing or offering to practice beyond the scope of licensure of massage therapy without legal authority;

(6) Grossly negligent in the practice of massage or guilty of employing, allowing or permitting an unlicensed person to perform massage in the licensee’s work site;

(7) Practicing massage or bodywork with a license from another state or jurisdiction that has been canceled, revoked, suspended or otherwise restricted;
(8) Incapacitated by a physical or mental disability which is determined by a physician to render further practice by the licensee inconsistent with competency and ethics requirements;

(9) Convicted of sexual misconduct, assignation or the solicitation or attempt thereof;

(10) Engaging in any act of sexual abuse, sexual misconduct or sexual exploitation related to the licensee’s practice of massage therapy;

(11) Obtaining any fee by fraud, deceit or misrepresentation; or

(12) In violation of any of the provisions of this article or any substantive rule adopted under the authority of this article.

§30-37-9. Hearing for revocation, suspension, other discipline, nonrenewal of license.

All proceedings for the revocation, suspension, or other disciplinary sanctions, or nonrenewal of licenses issued under the authority of this chapter shall be governed by the provisions of section eight, article one, chapter thirty of this code.


(a) After the thirtieth day of June, one thousand nine hundred ninety-eight, a person, corporation or association who is not licensed pursuant to the provisions of this article may not engage in the practice of massage therapy and may not use the initials LMT, C.M.T., or the words “licensed massage therapist,” “masseur,” or “masseuse,” or any other words or titles which imply or represent that the person, corporation or association is engaging in the practice of massage therapy, nor may a person, corporation or association employ any person, not duly licensed, who is engaging in the practice of massage
(b) Any person, corporation or association who violates the provisions of subsection (a) of this section 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 not more than one year, or both fined and imprisoned.


Nothing in this article may be construed to prohibit or otherwise limit:

(a) The practice of a profession by persons who are licensed, certified or registered under the laws of this state and who are performing services within their authorized scope of practice. Persons exempted under this subdivision include, but are not limited to, those licensed, certified or registered to practice within the scope of any branch of medicine, nursing, osteopathy, chiropractic and podiatry, as well as licensed, certified or registered barbers, cosmetologists, athletic trainers, physical and occupational therapists; and any student enrolled in a program of massage education at a school approved by the West Virginia State College System Board or by a state agency in another state, the District of Columbia or a United States territory which approves educational programs and which meets qualifications for the National Certification Exam administered through the National Certification Board for Therapeutic Massage and Bodywork, provided that the student does not hold himself or herself out as a licensed massage therapist and does not charge or receive a fee; and

(b) The activities of any resort spa that has been operating on a continuing basis since the first day of January, one
thousand nine hundred seventy-five, or any employees of the resort spa. The exemption set forth in this subsection does not extend to any person, corporation or association providing escort services, nude dancing or other sexually oriented services not falling within the scope of massage therapy as defined in this article, irrespective of how long the person, corporation or association has been in operation.

CHAPTER 185

(H. B. 4606 — By Delegates Beane, Yost, Talbott, Blair, Ennis, Laquinta and Swartzmiller)

[Passed March 10, 2006; in effect ninety days from passage.] [Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §30-40-20 of the Code of West Virginia, 1931, as amended, relating to the Real Estate Licensing Act generally; and eliminating the requirement that complaints be verified.

Be it enacted by the Legislature of West Virginia:

That §30-40-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-20. Complaints; investigation.

(a) The commission may upon its own motion and shall upon the filing of a complaint setting forth a cause of action under this article or the rules promulgated thereunder, ascertain
the facts and if warranted hold a hearing for the suspension or
revocation of a license, or the imposition of sanctions against a
licensee.

(b) The commission shall consider complaints which are
submitted in writing and set forth the details of the transaction.

(c) Upon initiation or receipt of the complaint, the commis-
mission shall provide a copy of the complaint to the licensee for his
or her response to the allegations contained in the complaint.
The accused party shall file an answer within twenty days of the
date of service. Failure of the licensee to file a timely response
may be considered an admission of the allegations in the
complaint: Provided, That nothing contained herein shall
prohibit the accused party from obtaining an extension of time
to file a response, if the commission, its executive director or
other authorized representative permits the extension.

(d) The commission may cause an investigation to be made
into the facts and circumstances giving rise to the complaint
and any person licensed by the commission has an affirmative
duty to assist the commission, or its authorized representative,
in the conduct of its investigation.

(e) After receiving the licensee’s response and reviewing
any information obtained through investigation, the commission
shall determine if probable cause exists that the licensee has
violated any provision of this article or the rules.

(f) If a determination that probable cause exists for
disciplinary action, the commission may hold a hearing in
compliance with section twenty-one of this article or may
dispose of the matter informally through a consent agreement
or otherwise.
AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all relating to the Public Employees Insurance Agency, establishing the West Virginia Retiree health Benefit Trust Fund, providing for post-employment Health care benefits, operation and funding and establishing that the eighty-twenty split between employer and employee for the scheduled increase in health care costs for employees may be partially offset by a legislative appropriation.

Be it enacted by the Legislature of West Virginia:

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended; and that said code be amended by adding thereto a new article, designated §5-16D-1, §5-16D-2, §5-16D-3, §5-16D-4, §5-16D-5 and §5-16D-6, all to read as follows:

Article
16D. West Virginia Retirement Health Benefit Trust Fund.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
(a) The purpose of the finance board created by this article is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the agency's estimated total financial requirements, taking into account all revenues projected to be made available to the agency and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary's opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:
(1) Maximum levels of reimbursement which the Public Employees Insurance Agency makes to categories of health care providers;

(2) Any necessary cost containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds’ ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year during which the finance board remains in existence. The finance board chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all
estimated program and administrative costs of the Public
Employees Insurance Agency for the fiscal year. The proposed
financial plan shall allow for no more than thirty days of
accounts payable to be carried over into the next fiscal year.
Before final adoption of the proposed financial plan, the finance
board shall request the actuary to review the plan and to render
a written professional opinion stating whether the plan will
generate sufficient revenues to meet all estimated program and
administrative costs of the Public Employees Insurance Agency
for the fiscal year. The actuary’s report shall explain the basis
of its opinion. If the actuary concludes that the proposed
financial plan will not generate sufficient revenues to meet all
anticipated costs, then the finance board shall make necessary
modifications to the proposed plan to ensure that all actuarially
determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary’s opinion, the finance board
shall conduct one or more public hearings in each congressional
district to receive public comment on the proposed financial
plan, shall review the comments and shall finalize and approve
the financial plan.

(4) Any financial plan shall be designed to allow thirty days
or less of accounts payable to be carried over into the next fiscal
year. For each fiscal year, the Governor shall provide his or her
estimate of total revenues to the finance board no later than the
fifteenth day of October of the preceding fiscal year: Provided,
That, for the prospective financial plans required by this
section, the Governor shall estimate the revenues available for
each fiscal year of the plans based on the estimated percentage
of growth in general fund revenues. The finance board shall
submit its final, approved financial plan, after obtaining the
necessary actuary’s opinion and conducting one or more public
hearings in each congressional district, to the Governor and to
the Legislature no later than the first day of January preceding
the fiscal year. The financial plan for a fiscal year becomes
effective and shall be implemented by the director on the first
day of July of the fiscal year. In addition to each final, approved
financial plan required under this section, the finance board
shall also simultaneously submit financial statements based on
generally accepted accounting practices (GAAP) and the final,
approved plan restated on an accrual basis of accounting, which
shall include allowances for incurred but not reported claims:
Provided, however, That the financial statements and the
accrual-based financial plan restatement shall not affect the
approved financial plan.

(e) The provisions of chapter twenty-nine-a of this code
shall not apply to the preparation, approval and implementation
of the financial plans required by this section.

(f) By the first day of January of each year the finance
board shall submit to the Governor and the Legislature a
prospective financial plan, for a period not to exceed five years,
for the programs provided in this article. Factors that the board
shall consider include, but are not limited to, the trends for the
program and the industry; the medical rate of inflation; utiliza-
tion patterns; cost of services; and specific information such as
average age of employee population, active to retiree ratios, the
service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the
estimated revenues submitted in accordance with subdivision
(4), subsection (d) of this section and shall include an average
of the projected cost-sharing percentages of premiums and an
average of the projected deductibles and copays for the various
programs. Beginning in the plan year which commences on the
first day of July, two thousand two, and in each plan year
thereafter, until and including the plan year which commences
on the first day of July, two thousand six, the prospective plans
shall include incremental adjustments toward the ultimate level
required in this subsection, in the aggregate cost-sharing
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percentages of premium between employers and employees, including the amounts of any subsidization of retired employee benefits: Provided, That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, the portion of the policy surcharge collected from certain fire and casualty insurers and transferred into the fund in the State Treasury of the Public Employees Insurance Agency pursuant to the provisions of section thirty-three, article three, chapter thirty-three of this code shall be used, in lieu of an increase in costs to active state pool employees, to subsidize any incremental adjustment in those employees' portion of the aggregate cost-sharing percentages of premium between employers and employees. The foregoing does not prohibit any premium increase occasioned by an employee's increase in salary: Provided, however, That for the period beginning the first day of July, two thousand five, through the thirty-first day of December, two thousand five, in lieu of an increase in costs to retired state pool employees, such funds as are necessary to subsidize any increase in costs to retired state pool employees shall be transferred from the reserve fund established in section twenty-five of this article into the fund in the State Treasury of the Public Employees Insurance Agency. Effective in the plan year commencing on the first day of July, two thousand six, and in each plan year thereafter, the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of eighty percent for the employer and twenty percent for employees, except for the employers provided in subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be governed by that subsection. After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles and copays for employees, except in the event of a true emergency as provided in this section: Provided further, That if the board invokes the
emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: And provided further, That for purposes of this section, “emergency” means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year: And provided further, That the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, scheduled to be at a level of twenty percent for employees by the first day of July two-thousand six may be offset, in part, by a legislative appropriation for that purpose, prior to the first day of July two-thousand six.

(h) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

(i) For any fiscal year in which legislative appropriations differ from the Governor’s estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.
§5-16D-1. Definitions.

As used in this article, the term:

(a) “Actuarial accrued liability” means that portion, as determined by a particular actuarial cost method, of the actuarial present value of fund obligations and administrative expenses which is not provided by future normal costs.

(b) “Actuarial cost method” means a method for determining the actuarial present value of the obligations and administrative expenses of the fund and for developing an actuarially equivalent allocation of the value to time periods, usually in the form of a normal cost and an actuarial accrued liability. Acceptable actuarial methods are the aggregate, attained age, entry age, frozen attained age, frozen entry age, and projected unit credit methods.

(c) “Actuarially sound” means that calculated contributions to the fund are sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing for fund obligations as they accrue in the future and the cost of amortizing the unfunded actuarial accrued liability over a period of no more than thirty years.

(d) “Actuarial present value of total projected benefits” means the present value, at the valuation date, of the cost to finance benefits payable in the future, discounted to reflect the expected effects of the time value of money and the probability of payment.
(e) "Actuarial assumptions" means assumptions regarding the occurrence of future events affecting the fund such as mortality, withdrawal, disability, and retirement; changes in compensation and offered post-employment benefits; rates of investment earnings and other asset appreciation or depreciation; procedures used to determine the actuarial value of assets; and other relevant items.

(f) "Actuarial valuation" means the determination, as of a valuation date, of the normal cost, actuarial accrued liability, actuarial value of assets, and related actuarial present values for the fund.

(g) "Administrative expenses" means all expenses incurred in the operation of the fund, including all investment expenses.

(h) "Annual required contribution" means the amount employers must contribute in a given year to fully fund the trust, as determined by the actuarial valuation in accordance with requirements of generally accepted accounting principles. This amount shall represent a level of funding that if paid on an ongoing basis is projected to cover the normal cost each year and amortize any unfunded actuarial liabilities of the plan over a period not to exceed thirty years.

(i) "Board" means the Public Employees Insurance Agency Finance Board created in section four, article sixteen of this chapter.

(j) "Cost sharing multiple employer plan" means a single plan with pooling (cost-sharing) arrangements for the participating employers. All risk, rewards, and costs, including benefit costs, are shared and not attributed individually to the employers. A single actuarial valuation covers all plan members and the same contribution rate(s) applies for each employer.

(k) "Covered health care expenses" means all actual health care expenses paid by the health plan on behalf, of fund
beneficiaries. Actual health care expenses include claims payments to providers and premiums paid to intermediary entities and health care providers by the health plan.

(l) “Employer” means any employer as defined by section two, article sixteen of this chapter, which has or will have retired employees in any Public Employees Insurance Agency health plan.

(m) “Employer annual required contribution” means the portion of the annual required contribution which is the responsibility of that particular employer.

(n) “Fund” means the West Virginia Retiree Health Benefit Trust Fund established under this article.

(o) “Fund beneficiaries” means all persons receiving post-employment health care benefits through the health plan.

(p) “Health plan” means the health insurance plan or plans established under article sixteen of this chapter.

(q) “Minimum annual employer premium payment” means the annual amount paid by employers toward retiree premiums, which, when combined with the retirees’ contributions on their premiums that year, provide sufficient funds to cover all projected retiree covered health care expenses and related administrative costs for that year. The finance board shall develop the minimum annual employer premium payment as part of its financial plan each year as addressed in section five, article sixteen of this chapter.

(r) “Normal cost” means that portion of the actuarial present value of the fund obligations and expenses which is allocated to a valuation year by the actuarial cost method used for the fund.
§5-16D-2. Creation of West Virginia Retiree Health Benefit Trust Fund.

The Legislature declares that certain dedicated revenues should be preserved in trust for the purpose of funding other post-employment benefits.
There is hereby created the West Virginia Retiree Health Benefit Trust Fund for the purpose of providing for and administering retiree post-employment health care benefits, and the respective revenues and costs of those benefits as a cost sharing multiple employer plan.

The fund shall be available without fiscal year limitations for covered health care expenses and administration costs. All contributions, appropriations, earnings, and reserves for the payment of obligations under this article shall be credited to the fund and are irrevocable.

The amounts remaining in the fund, if any, after covered health care expenses and administration costs have been paid shall be retained in the fund as a special reserve for adverse fluctuation. All assets of the fund shall be used solely for the payment of fund obligations and for no other purpose.

§5-16D-3. Operation of trust fund.

(a) Responsibility for the rules and policies for the proper operation of the fund is vested in the board.

(b) The board shall adopt actuarial assumptions as it deems necessary and prudent.

(c) The board shall determine the annual required contribution rates sufficient to maintain the fund in accordance with the state plan for other post-employment benefits.

(d) The board may promulgate, in accordance with chapter twenty-nine-a of this code, any rules it finds necessary to properly administer the fund. The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code.

(e) The Public Employees Insurance Agency shall furnish reports to the board at each of the board’s regularly scheduled
meetings. The reports shall contain the most recent information reasonably available to the Public Employees Insurance Agency reflecting the obligations of the fund, earnings on investments, and such other information as the board deems necessary and appropriate.

(f) The Secretary of the Department of Administration, as chairman of the board, shall cause to be employed within the Public Employees Insurance Agency such personnel as may be needed to carry out the provisions of this article. The pro rata share of the costs to the Public Employees Insurance Agency of operating the fund shall be part of the administrative costs of the fund and shall be reimbursed to the Public Employees Insurance Agency.

(g) The Public Employees Insurance Agency, on the board’s behalf, shall be responsible for the day-to-day operation of the fund and may employ or contract for the services of actuaries and other professionals as required to carry out the duties established by this article.

(h) The board shall contract with the West Virginia Investment Management Board for any necessary services with respect to fund investments.

(i) The Public Employees Insurance Agency, on the board’s behalf, shall maintain all necessary records regarding the fund in accordance with generally accepted accounting principles.

(j) The Public Employees Insurance Agency, on the board’s behalf, shall collect all moneys due to the fund and shall pay current post-employment healthcare costs and any administrative expenses necessary and appropriate for the operation of the fund from the fund. The fund’s assets shall be maintained and accounted for in state funds. The state funds shall be: (1) The Other Post-Employment Benefit Contribution Accumulation
Fund; (2) the Other Post-Employment Benefit Investment Fund; and (3) the Other Post-Employment Benefit Expense Fund. These funds will be maintained by the Public Employees Insurance Agency on the board’s behalf.

(k) The Public Employees Insurance Agency, on the board’s behalf, shall prepare an annual report of fund activities. Such report shall include, but not be limited to, independently audited financial statements in accordance with generally accepted accounting principles. The financial statements must be independently audited in accordance with auditing standards generally accepted in the United States and the standards applicable to financial audits contained in government auditing standards as issued by the Comptroller General of the United States.

(l) Notwithstanding any other provision of law to the contrary, the Public Employees Insurance Agency shall be entitled to request and receive any information that it deems necessary and appropriate from any relevant retirement system in order that the provisions of this article may be carried out.

§5-16D-4. Actuary.

(a) The actuary employed or retained by the Public Employees Insurance Agency shall provide technical advice to the Public Employees Insurance Agency and to the board regarding the operation of the fund.

(b) Using the actuarial assumptions most recently adopted by the board, the actuary shall, on a biannual basis, or as frequently as the board determines necessary, set actuarial valuations of normal cost, actuarial liability, actuarial value of assets, and related actuarial present values for the state plan for other post-employment benefits.
§5-16D-5. Operational control of trust fund.

(a) The Public Employees Insurance Agency shall have operational control over the fund. The obligations provided in this article and all related administrative expenses shall be paid from the fund. The Public Employees Insurance Agency may expend moneys from the fund for any purpose authorized by this article.

(b) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the fund shall be held in trust. The Public Employees Insurance Agency, on behalf of the board, shall have full power to invest and reinvest the fund’s assets via the West Virginia Investment Management Board, subject to all of the terms, conditions, limitations, and restrictions imposed by article six, chapter twelve of this code. Subject to the terms, conditions, limitations and restrictions, and consistent with this article, the Public Employees Insurance Agency shall have full power to hold, purchase, sell, assign, transfer, and dispose of any securities and investments in which any of the moneys are invested, including the proceeds of any investments and other moneys belonging to the fund.

(c) Except as otherwise provided in this chapter, no member of the board or employee of the Public Employees Insurance Agency shall have any personal interest in the gains or profits from any investment made by the board or use the assets of the fund in any manner, except to make such payments as may be authorized by the board or by the Secretary of the Department of Administration as the chairman of the board in accordance with this article.

§5-16D-6. Mandatory employer contributions.

(a) The board shall annually set the total annual required contribution sufficient to maintain the fund in an actuarially
sound manner in accordance with generally accepted accounting principles.

(b) The board shall annually allocate to the respective employers the employer’s portion of the annual required contribution, which allocated amount is the “employer annual required contribution”.

(c) The board may apportion the annual required contribution into various components. These components may include the amortized unfunded actuarial accrued liability, the total normal cost, the employer annual required contribution and the lesser included minimum annual employer premium payment.

(d) It shall be the mandatory responsibility of employers to make annual contributions to the fund in, at least, the amount of the minimum annual employer premium payment rates established by the board.

(e) It shall be the responsibility of the Public Employees Insurance Agency to bill each employer for the employer annual required contribution and the included minimum annual employer premium payment. It shall be the responsibility of the Public Employees Insurance Agency to annually collect the minimum annual employer premium payment. The Public Employees Insurance Agency shall, in addition to the minimum annual employer premium payment, collect any amounts the employer elects to pay toward the employer annual required contribution. Any employer annual required contribution amount not satisfied by the respective employer shall remain the liability of that employer until fully paid.
AN ACT to amend and reenact §20-1A-4 of the Code of West Virginia, 1931, as amended, relating to updating appraisal standards employed by the Public Land Corporation to determine fair market value of public lands.

Be it enacted by the Legislature of West Virginia:

That §20-1A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§20-1A-4. Public land corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.

(a) Sales, exchanges or transfers of public lands under this article shall be conducted under competitive bidding procedures. However, where the secretary determines it necessary and proper in order to assure the following public policies, including, but not limited to, a preference to users, lands may be sold by modified competitive bidding or without competitive bidding. In recognizing public policies, the secretary shall give consideration to the following potential purchasers:

(1) The local government entities which are in the vicinity of the lands; and
(2) Adjoining landowners.

(b) The policy for selecting the methods of sale is as follows:

(1) Competitive sale is the general procedure for sales of public lands and shall be used in the following circumstances:

(A) Wherever in the judgment of the secretary the lands are accessible and usable regardless of adjoining land ownership; or

(B) Wherever the lands are within a developing or urbanizing area and land values are increasing due to the location of the land and interest on the competitive market.

(2) Modified competitive sales may be used to permit the adjoining landowner or local governmental entity to meet the high bid at the public sale. Lands otherwise offered under this procedure would normally be public lands not located near urban expansion areas, or not located near areas with rapidly increasing land values, and where existing use of adjacent lands would be jeopardized by sale under competitive bidding procedures.

(3) Direct sale may be used when the lands offered for sale are completely surrounded by lands in one ownership with no public access, or where the lands are needed by local governments.

(4) In no event shall lands be offered for sale by “modified competitive sales” or “direct sale” unless and until the corporation makes a written finding of justification for use of an alternative bidding procedure.

(5) Subject to the bidding procedures set forth herein, the corporation is authorized, at its discretion, to sell public lands
subject to rights-of-way, restrictive covenants or easements
retained by the corporation, limiting the use of such lands to
purposes consistent with the use of adjoining or nearby lands
owned by the corporation.

(c) When lands have been offered for sale by one method
of sale and the lands remain unsold, then the lands may be
reoffered by another method of sale.

(d) Except as provided herein, public lands may not be sold,
exchanged or transferred by the corporation for less than fair
market value. Fair market value shall be determined by an
appraisal made by an independent person or firm chosen by the
public land corporation. The appraisal shall be performed using
the principles contained in the current “Uniform Appraisal
Standards for Federal Land Acquisitions” published under the
auspices of the Interagency Land Acquisition Conference:
Provided, That public lands may be sold, exchanged or
transferred to any federal agency or to the state or any of its
political subdivisions for less than fair market value if, upon a
specific written finding of fact, the corporation determines that
such a transfer would be in the best interests of the corporation
and state.

(e) The corporation may reject all bids when such bids do
not represent the corporation’s considered value of the property
exclusive of the fair market value.

(f) The corporation shall promulgate rules, in accordance
with the provisions of chapter twenty-nine-a of this code,
regarding procedures for conducting public land sales by
competitive bidding, modified competitive bidding and direct
sales.
AN ACT to amend and reenact §12-6C-7 and §12-6C-9 of the Code of West Virginia, 1931, as amended, all relating to authorizing the Board of Treasury Investments to retain, rather than require it to retain, one employee with a chartered financial analyst designation or an employee who is a certified treasury manager; removing the restriction on investing in mortgage-backed securities; and adding certificates of deposit as an investment.

Be it enacted by the Legislature of West Virginia:

That §12-6C-7 and §12-6C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety bonds for directors; liability of directors.

(a) The management and control of the Consolidated Fund is vested solely in the board in accordance with the provisions of this article.
(b) The State Treasurer is the chairperson of the board. The board shall elect a vice chairperson. Annually, the directors shall elect a secretary to keep a record of the proceedings of the board and provide any other duties required by the board. The board may elect a person who is not a member of the board as secretary.

(c) The board may use the staff of the State Treasurer, employ personnel and contract with any person or entity needed to perform the tasks related to operating the Consolidated Fund.

(d) The board shall retain an internal auditor to report directly to the board and shall fix his or her compensation. As a minimum qualification, the internal auditor shall be a certified public accountant with at least three years’ experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures, internal controls and the security of transactions.

(e) The board may retain one employee with a chartered financial analyst designation or an employee who is a certified treasury manager.

(f) Each director shall give a separate fiduciary or surety bond from a surety company qualified to do business within this state in a penalty amount of one million dollars for the faithful performance of his or her duties as a director. The board shall purchase a blanket bond for the faithful performance of its duties in the amount of fifty million dollars or in an amount equivalent to one percent of the assets under management, whichever is greater. The amount of the blanket bond is in addition to the one million dollar individual bond required of each director by the provisions of this section. The board may require a fiduciary or surety bond from a surety company qualified to do business in this state for any person who has charge of, or access to, any securities, funds or other moneys
held by the board and the amount of the fiduciary or surety
bond are fixed by the board. The premiums payable on all
fiduciary or surety bonds are expenses of the board.

(g) The directors, employees of the board and employees of
the State Treasurer performing work for or on behalf of the
board are not liable personally, either jointly or severally, for
any debt or obligation created by the board: Provided, That the
directors and employees of the board are liable for acts of
misfeasance or gross negligence.

(h) The board is exempt from the provisions of article three,
chapter five-a, and sections seven and eleven, article three,
chapter twelve of this code. However, the board is subject to the
purchasing policies and procedures of the State Treasurer’s
Office.

§12-6C-9. Asset allocation; investment policies, authorized
investments; restrictions.

(a) The board shall develop, adopt, review or modify an
asset allocation plan for the Consolidated Fund at each annual
board meeting.

(b) The board shall adopt, review, modify or cancel the
investment policy of each fund or pool created at each annual
board meeting. For each participant directed account authorized
by the State Treasurer, staff of the board shall develop an
investment policy for the account and create the requested
account. The board shall review all existing participant directed
accounts and investment policies at its annual meeting for
modification.

(c) The board shall consider the following when adopting,
reviewing, modifying or canceling investment policies:

(1) Preservation of capital;
(2) Risk tolerance;
(3) Credit standards;
(4) Diversification;
(5) Rate of return;
(6) Stability and turnover;
(7) Liquidity;
(8) Reasonable costs and fees;
(9) Permissible investments;
(10) Maturity ranges;
(11) Internal controls;
(12) Safekeeping and custody;
(13) Valuation methodologies;
(14) Calculation of earnings and yields;
(15) Performance benchmarks and evaluation; and
(16) Reporting.

(d) No security may be purchased by the board unless the type of security is on a list approved at a board meeting. The board shall review the list at its annual meeting.

(e) Notwithstanding the restrictions which are otherwise provided by law with respect to the investment of funds, the board and all participants, now and in the future, may invest funds in these securities:
(1) Obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency or corporation thereof and obligations and securities of the United States sponsored enterprises, including, without limitation:

(i) United States Treasury;

(ii) Export-Import Bank of the United States;

(iii) Farmers Home Administration;

(iv) Federal Farm Credit Banks;

(v) Federal Home Loan Banks;

(vi) Federal Home Loan Mortgage Corporation;

(vii) Federal Land Banks;

(viii) Government National Mortgage Association;

(ix) Merchant Marine bonds; and

(x) Tennessee Valley Authority Obligations;

(2) Obligations of the Federal National Mortgage Association;

(3) Commercial paper with one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm;

(4) Corporate debt rated in one of the six highest rating categories by a nationally recognized rating agency;

(5) State and local government, or any instrumentality or agency thereof, securities with one of the three highest ratings by a nationally recognized rating agency;
(6) Repurchase agreements involving the purchase of United States Treasury securities and repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(7) Reverse repurchase agreements involving the purchase of United States Treasury securities and reverse repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities;

(8) Asset-backed securities rated in the highest category by a nationally recognized rating agency;

(9) Certificates of deposit; and

(10) Investments in accordance with the Linked Deposit Program, a program using financial institutions in West Virginia to obtain certificates of deposit, loans approved by the Legislature and any other programs authorized by the Legislature.

(f) In addition to the restrictions and conditions contained in this section:

(1) At no time shall more than seventy-five percent of the Consolidated Fund be invested in any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association;

(2) At no time shall more than five percent of the Consolidated Fund be invested in securities issued by a single private corporation or association; and

(3) At no time shall less than fifteen percent of the Consolidated Fund be invested in any direct obligation of or obligation guaranteed as to the payment of both principal and interest by the United States of America.
AN ACT to amend and reenact §15-5-15 of the Code of West Virginia, 1931, as amended, relating to employing homeland security and emergency service personnel.

Be it enacted by the Legislature of West Virginia:

That §15-5-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


1 (a) No person may be employed or associated in any capacity in homeland security or any emergency service organization established under this article who has been convicted of a felony or who advocates or has advocated a change by force or violence in the constitutional form of the government of the United States or this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States.

10 (b) Each person who is appointed to serve in an organization for homeland security or emergency services shall undergo
a background check and shall, before entering upon his or her
duties, take an oath, in writing, before a person authorized to
administer oaths in this state, which shall be substantially as
follows:

“I,______________, do solemnly swear or affirm that
I will support and defend the Constitution of the United States
and the Constitution of West Virginia against all enemies,
foreign and domestic; that I will bear true faith and allegiance
to the same; that I take this obligation freely, without any
mental reservation or evasion; that I am not a convicted felon;
and that I will faithfully and competently discharge the duties
upon which I am about to enter.

“I do further swear or affirm that I do not advocate, nor am
I a member of any political party or organization that advocates,
the overthrow of the government of the United States or this
state by force or violence; while I am a member of the (name of
organization) I will not advocate or become a member of any
political party or organization that advocates the overthrow of
the government of the United States or this state by force or
violence.”

CHAPTER 190

(S. B. 419 — By Senators Love and Hunter)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §16-13A-25 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §24-2-1
and §24-2-11 of said code, all relating to the authority of the
Public Service Commission; providing that an innovative, alternative sewer service method provided by a public utility is subject to the jurisdiction of the Public Service Commission; modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; and providing that Infrastructure and Jobs Development Council-approved projects receiving a certificate of public convenience may not be compelled to reopen.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-1 and §24-2-11 of said code be amended and reenacted, all to read as follows:

Chapter


CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article without the prior consent and approval of the Public Service Commission: Provided, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five, from the commission
and where the cost of the project changes but the change does not affect the rates established for the project.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or

(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.

(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or
(4) A contract that does not exceed fifteen thousand dollars.

d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.

e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

§24-2-11. Requirements for certificate of public convenience and necessity.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline;
transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility intends to provide sewer service by an innovative, alternative method, as defined by the Federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, however, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided further, That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: And provided further, That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: And provided further, That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner
shall be authorized to carry out all decision-making duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.

(b) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(c) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before the first day of July, two thousand three, shall be subject to subsections (e), (f), (g), (h), (i) and (j).
section eleven-c of this article as if the certificate of public
convenience and necessity for such facility were a siting
certificate issued under said section and shall not otherwise be
subject to the jurisdiction of the commission or to the provi-
sions of this chapter with respect to such facility except for the
making or constructing of a material modification thereof as
provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to
construct or construct and operate an electric generating facility
to be located in this state that has been designated as an exempt
wholesale generator under applicable federal law, or will be so
designated prior to commercial operation of the facility, and for
which facility the owner or operator does not hold a certificate
of public convenience and necessity issued by the commission
on or before the first day of July, two thousand three, shall,
prior to commencement of construction of the facility, obtain a
siting certificate from the commission pursuant to the provi-
sions of section eleven-c of this article in lieu of a certificate of
public convenience and necessity pursuant to the provisions of
section eleven of this article. An owner or operator of an
electric generating facility as is described in this subdivision for
which a siting certificate has been issued by the commission
shall be subject to subsections (e), (f), (g), (h), (i) and (j),
section eleven-c of this article and shall not otherwise be
subject to the jurisdiction of the commission or to the provi-
sions of this chapter with respect to such facility except for the
making or constructing of a material modification thereof as
provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility
located in this state that had not been designated as an exempt
wholesale generator under applicable federal law prior to
commercial operation of the facility, that generates electric
energy solely for sale at retail outside this state or solely for
sale at wholesale in accordance with any applicable federal law
that preempts state law or solely for both such sales at retail and such sales at wholesale, and that had been constructed and had engaged in commercial operation on or before the first day of July, two thousand three, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before the first day of July, two thousand three, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.
(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to the first day of July, two thousand three, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by, and described in this subsection, shall not be deemed to affect or limit the commission’s jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

§24-2-11. Requirements for certificate of public convenience and necessity.
(a) No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if not protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days’ notice of the filing of any such application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the
filing of the application and within ninety days after final
submission of any such application for decision following a
hearing.

(e) The commission shall render its final decision on any
application filed under the provisions of this section that has
received the approval of the Infrastructure and Jobs Develop-
ment Council pursuant to article fifteen-a, chapter thirty-one of
this code within one hundred eighty days after filing of the
application: Provided, That if a protest is received within thirty
days after the notice is provided pursuant to subsection (b) of
this section, the commission shall render its final decision
within two hundred seventy days of the filing of the application.

(f) If the projected total cost of a project which is the
subject of an application filed pursuant to this section or section
eleven-a of this article is greater than fifty million dollars, the
commission shall render its final decision on any such applica-
tion filed under the provisions of this section or section eleven-
a of this article within four hundred days of the filing of the
application and within ninety days after final submission of any
such application for decision after a hearing.

(g) If a decision is not rendered within the aforementioned
one hundred eighty days, two hundred seventy days, four
hundred days or ninety days, the commission shall issue a
certificate of convenience and necessity as applied for in the
application.

(h) The commission shall prescribe such rules as it may
deem proper for the enforcement of the provisions of this
section; and, in establishing that public convenience and
necessity do exist, the burden of proof shall be upon the
applicant.

(i) Pursuant to the requirements of this section the commis-
sion may issue a certificate of public convenience and necessity
to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five, from the commission and has been approved by the Infrastructure and Jobs Development Council, is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

CHAPTER 191

(S. B. 578 — By Senators Fanning and Plymale)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-11d, relating to
increasing the power of the Public Service Commission with respect to the takeover or transfer or takeover of troubled utilities; authorizing the revocation of certificates of public convenience and necessity for the effective abandonment or inability or unwillingness of gas and electric utilities to adequately serve its customers; establishing criteria which would need to be met to support a contemplated revocation of certificate authority; authorizing the Public Service Commission to concurrently require another public utility to acquire and serve the customers, facilities and service territory of a revoked utility; listing additional criteria to be considered prior to revoking authority or approving acquisition of territory; providing for the determination of an acquisition price for the revoked utility’s facilities and territory, either by agreement or by eminent domain; requiring reasonable notice and hearing to affected utility and customers before revoking certificate; and establishing deadline by which Public Service Commission may initiate proceeding to revoke authority pursuant to said section.

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 §24-2-11d, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11d. Revocation of certificate of public convenience and necessity; acquisition of facilities by capable public utility.

(a) In addition to the powers conferred by section seven, article two of this chapter, upon a finding by the Public Service Commission that a public utility which holds a certificate of public convenience and necessity to provide natural gas or electric service is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its
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owner or owners, or that its management is grossly and
willfully inefficient, irresponsible or unresponsive to the needs
of its customers, or is not capable of providing economical and
efficient utility service, the commission may, after reasonable
notice and opportunity for hearing has been afforded to the
affected utility and its customers, revoke the certificate of
public convenience and necessity held by the public utility. In
the case of such revocation, the commission shall concurrently
order a capable public utility to acquire the facilities of the
revoked public utility and to provide service to the customers
of the revoked public utility. The commission shall also allow
a capable public utility that acquires the facilities of a revoked
public utility to recover all reasonable costs related to such
acquisition of facilities and upgrading of service to customers
of the revoked public utility, including, but not limited to,
additional capital, environmental, operating and maintenance
costs.

(b) In making a determination to revoke a certificate of
public convenience and necessity, pursuant to subsection (a) of
this section, the commission shall consider: (1) The financial,
managerial and technical ability of the public utility considered
for revocation; (2) the financial, managerial and technical
ability of the capable public utility; (3) the expenditures that
may be necessary to make improvements to the facilities of the
public utility considered for revocation to assure compliance
with all applicable statutory and regulatory standards concern-
ing adequacy, efficiency, safety and reasonableness of service;
and (4) any other matters which may be relevant.

(c) The price of the acquisition of the facilities of the
revoked public utility shall be determined by an agreement
between the revoked public utility and the acquiring capable
public utility, subject to a determination by the commission that
the price is reasonable. If the revoked public utility and the
acquiring capable public utility are unable to agree on an acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the revoked public utility by following the procedure prescribed for exercising the power of eminent domain pursuant to article two, chapter fifty-four of this code. The fact that the acquisition price has not been agreed to or finally determined shall not delay the effect of any order issued by the commission pursuant to subsection (a) of this section.

(d) As used in this section, the following words and phrases shall have the following meanings:

(1) "Capable public utility" means a public utility which provides electric or natural gas service and has at least twenty-five thousand customers which provides the same type of utility service as the revoked public utility and has the financial, managerial and technical ability to comply with all applicable statutory and regulatory standards concerning adequacy, efficiency, safety and reasonableness of service on a long-term basis;

(2) "Revoked public utility" means a public utility with less than twenty-five thousand customers which has had its certificate of public convenience and necessity revoked by the commission pursuant to subsection (a) of this section.

(e) Any action of the Public Service Commission to revoke the certificate of public convenience and necessity of an electric or natural gas public utility pursuant to the provisions of this section must be initiated on or before the first day of March, two thousand eight.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-3-10, relating to authorizing the termination of water service for delinquent sewer bills; providing for the termination of water service for delinquent sewer bills where sewer service is provided by a public utility that is owned and operated by a homeowners' association; and providing for the termination of water service for delinquent sewer bills where sewer service is provided by a privately owned public utility.

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 §24-3-10, to read as follows:

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-10. Termination of water service for delinquent sewer bills.

1 (a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility
that is owned and operated by a homeowners’ association owns
and operates the other kind of facilities, either water or sewer,
then the privately owned public utility or the homeowners’
association may contract with the publicly or privately owned
utility, city, incorporated town, or public service district which
provides the other services to shutoff and discontinue the
supplying of water service for the nonpayment of sewer service
fees and charges.

(b) Any contracts entered into by a privately owned public
utility or by a public utility that is owned and operated by a
homeowners’ association pursuant to this section must be
submitted to the Public Service Commission for approval.

(c) Any privately owned public utility or any public utility
that is owned and operated by a homeowners’ association which
provides water and sewer service to its customers may termi-
nate water service for delinquency in payment of either water
or sewer bills.

(d) Where a privately owned public utility or a public utility
that is owned and operated by a homeowners’ association is
providing sewer service and another utility is providing water
service, and the privately owned public utility or the homeown-
ers’ association providing sewer service experiences a delin-
quency in payment, the utility providing water service, upon the
request of the homeowners’ association or the privately owned
public utility providing sewer service to the delinquent account,
shall terminate its water service to the customer having the
delinquent sewer account.

(e) Any termination of water service must comply with all
rules and orders of the Public Service Commission.
AN ACT to amend and reenact §17C-5-3 of the Code of West Virginia, 1931, as amended, relating to creating the criminal offense of reckless driving causing serious bodily injury; defining serious bodily injury; and penalties.

Be it enacted by the Legislature of West Virginia:

That §17C-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-3. Reckless driving; penalties.

(a) Any person who drives any vehicle upon any street or highway, or upon any residential street, or in any parking area, or upon the ways of any institution of higher education, whether public or private, or upon the ways of any state institution, or upon the property of any county boards of education, or upon any property within the state park and public recreation system established by the Director of the Division of Natural Resources pursuant to section three, article four, chapter twenty of this code in willful or wanton disregard for the safety of persons or property is guilty of reckless driving.
(b) The provisions of subsection (a) of this section shall not apply to those areas which have been temporarily closed for racing sport events or which may be set aside by the Director of the Division of Natural Resources within the state park and recreation system for exclusive use by motorcycles or other recreational vehicles.

(c) Every person convicted of reckless driving is guilty of a misdemeanor, and upon a first conviction thereof, shall be confined in jail for a period of not less than five days nor more than ninety days, or fined not less than twenty-five dollars nor more than five hundred dollars, or both, and upon conviction of a second or subsequent conviction thereof, shall be confined in jail not less than ten days nor more than six months, or fined not less than fifty dollars nor more than one thousand dollars, or both.

(d) Notwithstanding the provisions of subsection (c) of this section, any person convicted of a violation of subsection (a) of this section who in doing so proximately causes another to suffer serious bodily injury shall, upon conviction, be confined in jail not less than ten days nor more than six months or fined not less than fifty dollars nor more than one thousand dollars, or both.

(e) For purposes of subsection (d) of this section, “serious bodily injury” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
AN ACT to amend and reenact §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §11B-2-20 of said code; and to amend and reenact §33-20F-4 of said code, all relating generally to reserve funding; creating the Revenue Shortfall Reserve Fund – Part B; providing for the transfer of all moneys in the West Virginia Tobacco Settlement Medical Trust Fund including any interest and earnings thereon to the Revenue Shortfall Reserve Fund - Part B; closing the West Virginia Tobacco Settlement Medical Trust Fund; providing funding for the Revenue Shortfall Reserve Fund; providing legislative authority to appropriate moneys from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund - Part B; providing that repayments from the loan made to the physicians’ mutual insurance company shall be paid into the Revenue Shortfall Reserve Fund – Part B; providing for the investment of moneys in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11B-2-20 of said code
be amended and reenacted; and that §33-20F-4 of said code be amended and reenacted, all to read as follows:

Chapter
  4. The Legislature.
  11B. Department of Revenue.
  33. Insurance.

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until the first day of June, two thousand five, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's health-related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of educating the public about the health risks associated with tobacco usage and establishing a program designed to reduce and stop the use of tobacco by the citizens of this state and in particular by teenagers.

(b) There is hereby created a special account in the State Treasury, designated the “West Virginia Tobacco Settlement
12 Medical 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 a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. Funds paid into the account may also be derived from the following sources:

20 (1) All interest or return on investment accruing to the fund;

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

24 (3) Any appropriations by the Legislature which may be made for this purpose; and

26 (4) Any funds or accrued interest remaining in the Board of Risk and Insurance Management physicians’ mutual insurance company account created pursuant to section seven, article twenty-f, chapter thirty-three of this code on or after the first day of July, two thousand four.

31 (c)(1) The moneys from the principal in the trust fund may not be expended for any purpose, except that on the first day of April, two thousand three, the treasurer shall transfer to the Board of Risk and Insurance Management physicians’ mutual insurance company account created by section seven, article twenty-f, chapter thirty-three of this code, twenty-four million dollars from the West Virginia Tobacco Settlement Medical Trust Fund for use as the initial capital and surplus of the physicians’ mutual insurance company created pursuant to said article. The remaining moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget
and expended in accordance with the provisions of section three of this article.

(2) Notwithstanding any other provision of this code to the contrary, on the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand six, all moneys in the trust fund and any interest or other return earned thereon shall be transferred to the Revenue Shortfall Reserve Fund – Part B created in section twenty, article two, chapter eleven-b of this code and the trust fund shall be closed. No provisions of the amendments made to this section during the regular session of the Legislature in two thousand six may be construed to change the requirements of this section for the deposit of revenues received pursuant to the tobacco master settlement agreement into the workers’ compensation debt reduction fund.

(d) Notwithstanding the preceding subsections to the contrary, the first thirty million dollars of all revenues received after the thirtieth day of June, two thousand five, pursuant to section IX(c)(1) of the tobacco master settlement agreement shall in the fiscal year beginning the first day of July, two thousand five, and each fiscal year thereafter, be deposited in the workers’ compensation debt reduction fund established in the state treasury in section five, article two-d, chapter twenty-three of this code. Receipts in excess of thirty million dollars shall be deposited into the Tobacco Settlement Fund provided in section three of this article.

(e) Notwithstanding anything in this code to the contrary, strategic compensation payments received pursuant to section IX(c)(2) of the tobacco master settlement agreement, beginning in two thousand eight, shall be deposited in their entirety in the workers’ compensation debt reduction fund.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.
(a) There is hereby created in the state treasury a special revenue account, designated the “Tobacco Settlement Fund”, which shall be an interest bearing account and may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. These funds shall be available only upon appropriation by the Legislature as part of the state budget: Provided, That for the fiscal year two thousand, the first five million dollars received into the fund shall be transferred to the public employees insurance reserve fund created in article two, chapter five-a of this code.

(b) Appropriations from the Tobacco Settlement Fund are limited to expenditures for the following purposes:

(1) Reserve funds for continued support of the programs offered by the Public Employees Insurance Agency established in article sixteen, chapter five of this code;

(2) Funding for expansion of the federal-state medicaid program as authorized by the Legislature or mandated by the federal government;

(3) Funding for public health programs, services and agencies; and

(4) Funding for any state owned or operated health facilities.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.
(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) A Revenue Shortfall Reserve Fund is hereby continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. If at the end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or exceeding ten percent of the State’s General Revenue Fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this section to apply any surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve Fund balance is less than ten percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state’s fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or section twenty-one or section twenty-two of this article, then in that event the Governor may notify the presiding officers of both houses of
the Legislature in writing of his or her intention to convene the
Legislature pursuant to section nineteen, article VI of the
Constitution of West Virginia for the purpose of requesting the
introduction of a supplementary appropriation bill or to request
a supplementary appropriation bill at the next preceding regular
session of the Legislature to draw money from the surplus
Revenue Shortfall Reserve Fund to meet any anticipated
revenue shortfall. If the Legislature fails to enact a supplement-
ary appropriation from the Revenue Shortfall Reserve Fund
during any special legislative session called for the purposes set
forth in this section or during the next preceding regular session
of the Legislature, then the Governor may proceed with a
reduction of appropriations pursuant to sections twenty-one and
twenty-two of this article. Should any amount drawn from the
Revenue Shortfall Reserve Fund pursuant to an appropriation
made by the Legislature prove insufficient to address any
anticipated shortfall, then the Governor may also proceed with
a reduction of appropriations pursuant to sections twenty-one
and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is
authorized and may make an appropriation from the Revenue
Shortfall Reserve Fund for revenue shortfalls, for emergency
revenue needs caused by acts of God or natural disasters or for
other fiscal needs as determined solely by the Legislature.

(e) Prior to the thirty-first day of October, in any fiscal year
in which revenues are inadequate to make timely payments of
the state’s obligations, the Governor may by executive order,
after first notifying the presiding officers of both houses of the
Legislature in writing, borrow funds from the Revenue Shortfall
Reserve Fund. The amount of funds borrowed under this
subsection shall not exceed one and one-half percent of the
general revenue estimate for the fiscal year in which the funds
are to be borrowed, or the amount the Governor determines is
necessary to make timely payment of the state’s obligations,
whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) There is hereby created in the State Treasury the “Revenue Shortfall Reserve Fund – Part B.” The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the physician’s mutual insurance company pursuant to the provisions of article twenty-f, chapter thirty-three of this code, and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection; and

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after the thirtieth day of June, two thousand twenty-five, for expenditure for the purposes set forth in section three, article eleven-a, chapter four of this code; and
(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B, a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h)(1) Of the moneys in the Revenue Shortfall Reserve Fund, one hundred million dollars, or such greater amount as may be certified as necessary by the director of the budget for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund including accrued interest and other return earned thereon at the end of any fiscal year shall not revert to the general fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall
not revert to the general fund but shall remain in the Revenue
Shortfall Reserve Fund – Part B for the purposes set forth in
this section.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS’ MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements
and limitations; repayment of loan.

(a) Subject to the provisions of this article, a physicians’
mutual insurance company may be created as a domestic,
private, nonstock, nonprofit corporation. As an incentive for its
creation, the company may be eligible for funds from the
Legislature in accordance with the provisions of section seven
of this article. The company must remain for the duration of its
existence a domestic mutual insurance company owned by its
policyholders and may not be converted into a stock corpora-
tion, a for-profit corporation or any other entity not owned by
its policyholders. The company may not declare any dividend
to its policyholders; sell, assign or transfer substantial assets of
the company; or write coverage outside this state, except for
counties adjoining this state, until after any and all debts owed
by the company to the state have been fully paid.

(b) For the duration of its existence, the company is not and
may not be considered a department, unit, agency, or instru-
mentality of the state for any purpose. All debts, claims,
obligations, and liabilities of the company, whenever incurred,
shall be the debts, claims, obligations, and liabilities of the
company only and not of the state or of any department, unit,
agency, instrumentality, officer, or employee of the state.

(c) The moneys of the company are not and may not be
considered part of the general revenue fund of the state. The
debts, claims, obligations, and liabilities of the company are not
and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.

(e)(1) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter: Provided, That while the loan to the company of moneys from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to section nine of this article remains outstanding, the commissioner may waive the company’s premium taxes, additional premium taxes and additional fire and casualty insurance premium taxes if payment would render the company insolvent or otherwise financially impaired.

(2) On and after the first day of July, two thousand three, any premium taxes and additional premium taxes paid by the company and by any insurer on its medical malpractice line pursuant to sections fourteen and fourteen-a, article three of this chapter, shall be temporarily applied toward replenishing the moneys appropriated from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code pending repayment of the loan of such moneys by the company.

(3) The State Treasurer shall notify the commissioner when the moneys appropriated from the West Virginia tobacco settlement medical trust have been fully replenished, at which time the commissioner shall resume depositing premium taxes and additional premium taxes diverted pursuant to subdivision (2) of this subsection in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(4) Payments received by the treasurer from the company in repayment of any outstanding loan made pursuant to section
nine of this article shall be deposited in the West Virginia Tobacco Settlement Medical Trust Fund and dedicated to replenishing the moneys appropriated therefrom under subsection (c), section two, article eleven-a, chapter four of this code. Once the moneys appropriated from the West Virginia Tobacco Settlement Medical Trust Fund have been fully replenished, the treasurer shall deposit any payments from the company in repayment of any outstanding loan made pursuant to section nine of this article in said fund and transfer a like amount from said fund to the commissioner for disbursement in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(5) Notwithstanding any other provision of this code to the contrary, on and after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand six, all moneys otherwise required by this section to be deposited in the West Virginia Tobacco Settlement Medical Trust Fund and dedicated to replenishing the moneys transferred therefrom under subsection (c), section two, article eleven-a, chapter four of this code shall instead be paid into the Revenue Shortfall Reserve Fund – Part B created in section twenty, article two, chapter eleven-b of this code.

CHAPTER 195

(Com. Sub. for S. B. 173 — By Senators Foster, Barnes, Lanham, McCabe and Plymale)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend and reenact §5-10-14, §5-10-27 and §5-10-48 of the Code of West Virginia, 1931, as amended, all relating to the
Public Employees Retirement System generally; providing service credit for certain temporary legislative employees for retirement purposes; clarifying right of members and former members to select certain beneficiaries for preretirement death annuities; limiting choice of beneficiaries to receive preretirement death annuities for new members only; providing for preretirement death benefit of accumulated contributions to be paid in a lump sum amount to any beneficiary or beneficiaries chosen by a member; providing that the date of membership and date of passage control election of benefits; recognizing exception for certain members who die as a result of active military service; and providing for the reemployment of certain former legislative employees on a per diem basis under certain restrictions without suspension of retirement annuity.

Be it enacted by the Legislature of West Virginia:

That §5-10-14, §5-10-27 and §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-14. Service credit; retroactive provisions.
§5-10-27. Preretirement death annuities.
§5-10-48. Reemployment after retirement; options for holder of elected public office.

§5-10-14. Service credit; retroactive provisions.

(a) The board of trustees shall credit each member with the prior service and contributing service to which he or she is entitled based upon rules adopted by the board of trustees and based upon the following:

(1) In no event may less than ten days of service rendered by a member in any calendar month be credited as a month of service: Provided, That for employees of the state Legislature whose term of employment is otherwise classified as temporary
and who are employed to perform services required by the Legislature for its regular sessions or during the interim between regular sessions and who have been or are so employed during regular sessions or during the interim between regular sessions in seven consecutive calendar years, service credit of one month shall be awarded for each ten days employed in the interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit;

(2) Except for hourly employees, ten or more months of service credit earned in any calendar year shall be credited as a year of service: Provided, That no more than one year of service may be credited to any member for all service rendered by him or her in any calendar year and no days may be carried over by a member from one calendar year to another calendar year where the member has received a full-year credit for that year; and

(3) Service may be credited to a member who was employed by a political subdivision if his or her employment occurred within a period of thirty years immediately preceding the date the political subdivision became a participating public employer.

(b) The board of trustees shall grant service credit to employees of boards of health, the Clerk of the House of Delegates and the Clerk of the state Senate or to any former and present member of the State Teachers Retirement System who have been contributing members for more than three years, for service previously credited by the State Teachers Retirement System and shall require the transfer of the member’s contributions to the system and shall also require a deposit, with interest, of any withdrawals of contributions any time prior to the member’s retirement. Repayment of withdrawals shall be as directed by the board of trustees.
(c) Court reporters who are acting in an official capacity, although paid by funds other than the county commission or State Auditor, may receive prior service credit for time served in that capacity.

(d) Active members who previously worked in CETA (Comprehensive Employment and Training Act) may receive service credit for time served in that capacity: Provided, That in order to receive service credit under the provisions of this subsection the following conditions must be met: (1) The member must have moved from temporary employment with the participating employer to permanent full-time employment with the participating employer within one hundred twenty days following the termination of the member’s CETA employment; (2) the board must receive evidence that establishes to a reasonable degree of certainty as determined by the board that the member previously worked in CETA; and (3) the member shall pay to the board an amount equal to the employer and employee contribution plus interest at the amount set by the board for the amount of service credit sought pursuant to this subsection: Provided, however, That the maximum service credit that may be obtained under the provisions of this subsection is two years: Provided further, That a member must apply and pay for the service credit allowed under this subsection and provide all necessary documentation by the thirty-first day of March, two thousand three: And provided further, That the board shall exercise due diligence to notify affected employees of the provisions of this subsection.

(e)(1) Employees of the state Legislature whose terms of employment are otherwise classified as temporary and who are employed to perform services required by the Legislature for its regular sessions or during the interim time between regular sessions shall receive service credit for the time served in that capacity in accordance with the following. For purposes of this section, the term “regular session” means day one through day
sixty of a sixty-day legislative session or day one through day
thirty of a thirty-day legislative session. Employees of the state
Legislature whose term of employment is otherwise classified
as temporary and who are employed to perform services
required by the Legislature for its regular sessions or during the
interim time between regular sessions and who have been or are
employed during regular sessions or during the interim time
between regular sessions in seven consecutive calendar years,
as certified by the clerk of the house in which the employee
served, shall receive service credit of six months for all regular
sessions served, as certified by the clerk of the house in which
the employee served, or shall receive service credit of three
months for each regular thirty-day session served prior to one
thousand nine hundred seventy-one: Provided, That employees
of the state Legislature whose term of employment is otherwise
classified as temporary and who are employed to perform
services required by the Legislature for its regular sessions and
who have been or are employed during the regular sessions in
thirteen consecutive calendar years as either temporary
employees or full-time employees or a combination thereof, as
certified by the clerk of the house in which the employee
served, shall receive a service credit of twelve months for each
regular session served, as certified by the clerk of the house in
which the employee served: Provided, however, That the
amendments made to this subsection during the two thousand
two regular session of the Legislature only apply to employees
of the Legislature who are employed by the Legislature as
either temporary employees or full-time employees as of the
first day of January, two thousand two, or who become
employed by the Legislature as temporary or full-time employ-
ees for the first time after the first day of January, two thousand
two. Employees of the state Legislature whose terms of
employment are otherwise classified as temporary and who are
employed to perform services required by the Legislature
during the interim time between regular sessions shall receive
service credit of one month for each ten days served during the
interim between regular sessions, which interim days shall be cumulatively calculated so that any ten days, regardless of calendar month or year, shall be calculated toward any award of one month of service credit: Provided further, That no more than one year of service may be credited to any temporary legislative employee for all service rendered by that employee in any calendar year and no days may be carried over by a temporary legislative employee from one calendar year to another calendar year where the member has received a full year credit for that year. Service credit awarded for legislative employment pursuant to this section shall be used for the purpose of calculating that member's retirement annuity, pursuant to section twenty-two of this article, and determining eligibility as it relates to credited service, notwithstanding any other provision of this section. Certification of employment for a complete legislative session and for interim days shall be determined by the clerk of the house in which the employee served, based upon employment records. Service of fifty-five days of a regular session constitutes an absolute presumption of service for a complete legislative session and service of twenty-seven days of a thirty-day regular session occurring prior to one thousand nine hundred seventy-one constitutes an absolute presumption of service for a complete legislative session. Once a legislative employee has been employed during regular sessions for seven consecutive years or has become a full-time employee of the Legislature, that employee shall receive the service credit provided in this section for all regular and interim sessions and interim days worked by that employee, as certified by the clerk of the house in which the employee served, regardless of when the session or interim legislative employment occurred: And provided further, That regular session legislative employment for seven consecutive years may be served in either or both houses of the Legislature.

(2) For purposes of this section, employees of the Joint Committee on Government and Finance are entitled to the same
benefits as employees of the House of Delegates or the Senate:

Provided, That for joint committee employees whose terms of employment are otherwise classified as temporary, employment in preparation for regular sessions, certified by the Legislative Manager as required by the Legislature for its regular sessions, shall be considered the same as employment during regular sessions to meet service credit requirements for sessions served.

(f) Any employee may purchase retroactive service credit for periods of employment in which contributions were not deducted from the employee’s pay. In the purchase of service credit for employment prior to the year one thousand nine hundred eighty-nine in any department, including the Legislature, which operated from the General Revenue Fund and which was not expressly excluded from budget appropriations in which blanket appropriations were made for the state’s share of public employees’ retirement coverage in the years prior to the year one thousand nine hundred eighty-nine, the employee shall pay the employee’s share. Other employees shall pay the state’s share and the employee’s share to purchase retroactive service credit. Where an employee purchases service credit for employment which occurred after the year one thousand nine hundred eighty-eight, that employee shall pay for the employee’s share and the employer shall pay its share for the purchase of retroactive service credit: Provided, That no legislative employee and no current or former member of the Legislature may be required to pay any interest or penalty upon the purchase of retroactive service credit in accordance with the provisions of this section where the employee was not eligible to become a member during the years for which he or she is purchasing retroactive credit or had the employee attempted to contribute to the system during the years for which he or she is purchasing retroactive service credit and such contributions would have been refused by the board: Provided, however, That a legislative employee purchasing retroactive credit under this section does so within twenty-four months of becoming a
member of the system or no later than the last day of December,
two thousand eight, whichever occurs last: Provided further,
That once a legislative employee becomes a member of the
retirement system, he or she may purchase retroactive service
credit for any time he or she was employed by the Legislature
and did not receive service credit. Any service credit purchased
shall be credited as six months for each sixty-day session
worked, three months for each thirty-day session worked or
twelve months for each sixty-day session for legislative
employees who have been employed during regular sessions in
thirteen consecutive calendar years, as certified by the clerk of
the houses in which the employee served, and credit for interim
employment as provided in this subsection: And provided
further, That this legislative service credit shall also be used for
months of service in order to meet the sixty-month requirement
for the payments of a temporary legislative employee member’s
retirement annuity: And provided further, That no legislative
employee may be required to pay for any service credit beyond
the actual time he or she worked regardless of the service credit
which is credited to him or her pursuant to this section: And
provided further, That any legislative employee may request a
recalculation of his or her credited service to comply with the
provisions of this section at any time.

(g)(1) Notwithstanding any provision to the contrary, the
seven consecutive calendar years requirement and the thirteen
consecutive calendar years requirement and the service credit
requirements set forth in this section shall be applied retroac-
tively to all periods of legislative employment prior to the
passage of this section, including any periods of legislative
employment occurring before the seven consecutive and
thirteen consecutive calendar years referenced in this section:
Provided, That the employee has not retired prior to the
effective date of the amendments made to this section in the
two thousand two regular session of the Legislature.
(2) The requirement of seven consecutive years and the requirement of thirteen consecutive years apply retroactively to all legislative employment prior to the effective date of the two thousand six amendments to this section.

(h) The board of trustees shall grant service credit to any former or present member of the State Police Death, Disability and Retirement Fund who has been a contributing member of this system for more than three years for service previously credited by the State Police Death, Disability and Retirement Fund if the member transfers all of his or her contributions to the State Police Death, Disability and Retirement Fund to the system created in this article, including repayment of any amounts withdrawn any time from the State Police Death, Disability and Retirement Fund by the member seeking the transfer allowed in this subsection: Provided, That there shall be added by the member to the amounts transferred or repaid under this subsection an amount which shall be sufficient to equal the contributions he or she would have made had the member been under the Public Employees Retirement System during the period of his or her membership in the State Police Death, Disability and Retirement Fund plus interest at a rate determined by the board.

(i) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the two thousand six regular session.

§5-10-27. Preretirement death annuities.

(a) (1) Except as otherwise provided in this section, in the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article, may at any time prior to the effective date of his or her retirement, by written
declaration duly executed and filed with the board of trustees, in the same manner as if he or she were then retiring from the employ of a participating public employer, elect option A provided in section twenty-four of this article and nominate a beneficiary whom the board finds to have had an insurable interest in the life of the member. Prior to the effective date of his or her retirement, a member may revoke his or her election of option A and nomination of beneficiary and he or she may again prior to his or her retirement elect option A and nominate a beneficiary as provided in this subsection. Upon the death of a member who has an option A election in force, his or her beneficiary, if living, shall immediately receive an annuity computed in the same manner in all respects as if the same member had retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty years, and elected the said option A. If at the time of his or her retirement a member has an option A election in force, his or her election of option A and nomination of beneficiary shall thereafter continue in force. As an alternative to annuity option A, a member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(2) In the event any member or former member, who first became a member of the Public Employees Retirement System after the effective date of amendments made to this section during the two thousand six regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies without leaving a surviving spouse; but leaves surviving him or her a child who is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board; and has named the disabled child as sole beneficiary, the disabled child shall immediately receive an annuity computed in the same manner.
in all respects as if the member had: (A) Retired the daypreceding the date of his or her death, notwithstanding that heor she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in sectiontwenty-four of this article; and (C) nominated his or her disabled child as beneficiary. A member or former memberwith ten or more years of credited service, who does not leavetsurviving him or her a spouse or a disabled child, may elect to have the preretirement death benefit paid as a return ofaccumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses.

(b)(1) In the event any member who has ten or more yearsof credited service, or any former member with ten or moreyears of credited service and who is entitled to a deferredannuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immedi-ately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or shemight not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the board, the member or former member, may nominate a beneficiary who has an insurable interest in the member's or former member's life. As an alternative to annuity option A, the member or former member may elect to have the preretirement death benefit paid as a return of accumulated contributions in a lump sum amount to any beneficiary or beneficiaries he or she chooses in the event a waiver, as provided in this section, has been presented to and accepted by the board.
(2) Whenever any member or former member who first became a member of the retirement system after the effective date of the amendments to this section made during the two thousand six regular legislative session and who has ten or more years of credited service and who is entitled to a deferred annuity, pursuant to section twenty-one of this article: Dies; and leaves a surviving spouse, the surviving spouse shall immediately receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained age sixty or sixty-two years, as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her surviving spouse as beneficiary. However, the surviving spouse shall have the right to waive the annuity provided in this section: 

Provided, That he or she executes a valid and notarized waiver on a form provided by the board and that the member or former member attests to the waiver. If the waiver is presented to and accepted by the Board, the member or former member may: (1) Elect to have the preretirement death benefit paid in a lump sum amount, rather than annuity option A provided in section twenty-four of this article, as a return of accumulated contributions to any beneficiary or beneficiaries he or she chooses; or (2) may name his or her surviving child, who is financially dependent on the member by virtue of a permanent mental or physical disability, as his or her sole beneficiary to receive an annuity computed in the same manner in all respects as if the member had: (A) Retired the day preceding the date of his or her death, notwithstanding that he or she might not have attained the age of sixty or sixty-two as the case may be; (B) elected option A provided in section twenty-four of this article; and (C) nominated his or her disabled child as beneficiary.

(c) In the event any member who has ten or more years of credited service or any former member with ten or more years of credited service and who is entitled to a deferred annuity,
pursuant to section twenty-one of this article: (1) Dies without leaving surviving him or her a spouse; but (2) leaves surviving him or her an infant child or children; and (3) does not have a beneficiary nominated as provided in subsection (a) of this section, the infant child or children are entitled to an annuity to be calculated as follows: The annuity reserve shall be calculated as though the member had retired as of the date of his or her decease and elected a straight life annuity and the amount of the annuity reserve shall be paid in equal monthly installments to the member’s infant child or children until the child or children attain age twenty-one or sooner marry or become emancipated; however, in no event shall any child or children receive more than two hundred fifty dollars per month each. The annuity payments shall be computed as of the date of the death of the member and the amount of the annuity shall remain constant during the period of payment. The annual amount of the annuities payable by this section shall not exceed sixty percent of the deceased member’s final average salary.

(d) In the event any member or former member does not have ten or more years of credited service, no preretirement death annuity may be authorized, owed or awarded under this section, except as provided in subdivision (4), subsection (a), section fifteen of this article as amended during the two thousand five regular session of the Legislature.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby
further finds and declares that the interests of the public are
served when persons having retired from public employment
are permitted, within certain limitations, to render post-
retirement employment in positions of public service, either in
elected or appointed capacities. The Legislature further finds
and declares that it has the need for qualified employees and
that in many cases an employee of the Legislature will retire
and be available to return to work for the Legislature as a per
diem employee. The Legislature further finds and declares that
in many instances these employees have particularly valuable
expertise which the Legislature cannot find elsewhere. The
Legislature further finds and declares that reemploying these
persons on a limited per diem basis after they have retired is not
only in the best interests of this state, but has no adverse effect
whatsoever upon the actuarial soundness of this particular
retirement system.

(b) For the purposes of this section: (1) “Regularly
employed on a full-time basis” means employment of an
individual by a participating public employer, in a position
other than as an elected or appointed public official, which
normally requires twelve months per year service and/or
requires at least one thousand forty hours of service per year in
that position; (2) “temporary full-time employment or tempo-
rary part-time employment” means employment of an individ-
ual on a temporary or provisional basis by a participating public
employer, other than as an elected or appointed public official,
in a position which does not otherwise render the individual as
regularly employed; (3) “former employee of the Legislature”
means any person who has retired from employment with the
Legislature and who has at least ten years contributing service
with the Legislature; and (4) “reemployed by the Legislature”
means a former employee of the Legislature who has been
reemployed on a per diem basis not to exceed one hundred
seventy-five days per calendar year.
(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of twenty thousand dollars.

(d) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as such office holder or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be reappointed to the same position unless and until a
continuous six-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (b) of this section does not apply to the reemployed former employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative body of any political subdivision or of the state Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: Provided, That the member is eligible to retire under the provisions of section twenty or section twenty-one of this article: Provided, however, That the member elects
to stop actively contributing to the system while receiving such
in-service distributions.

(g) The provisions of section twenty-two-h of this article
are not applicable to the amendments made to this section
during the two thousand six regular session.

CHAPTER 196

(H. B. 4846 — By Delegates Michael, Leach, Kominar, Stalnaker,
Varner, H. White, Williams, Hall, Evans and G. White)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5-10-22i; to amend and
reenact §5E-1-8 of said code; to amend said code by adding
thereto a new section, designated §11-24-43; and to amend said
code by adding thereto a new section, designated §18-7A-26t, all
relating to providing one-time supplements to certain annuitants;
dedication of corporate net income tax proceeds to pay for
supplement; and supplying fiscal support for such supplements by
increasing available general revenue through the expiration of
certain tax credits.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §5-10-22i; that §5E-1-8
of said code be amended and reenacted; that said code be amended by
adding thereto a new section, designated §11-24-43; and that said
code be amended by adding thereto a new section, designated §18-7A-
26t, all to read as follows:
ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of not less than three percent and not exceeding four and one-half percent, as determined by appropriation of the Legislature, shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the effective date of this section and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the effective date of this section.

(b) The one-time supplement provided for in this section applies only to members who have retired at least five years prior to the effective date of this section or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.
CHAPTER 5E. VENTURE CAPITAL COMPANY.

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 for the fiscal year
beginning on the first day of July, two thousand six, the total 
credits authorized for all companies may not exceed a total of 
one million dollars: And provided further, That for the fiscal 
years beginning on the first day of July, two thousand seven, 
and two thousand eight, 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: Provided, however, That for the fiscal 
year beginning on the first day of July, two thousand six, all of 
the credits allowed under subdivision (1) of this subsection 
shall be allocated only to one or more small business invest-
ment companies described in this subdivision: Provided 
further, That for the fiscal years beginning on the first day of 
July, two thousand seven and two thousand eight, 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 technol-
ogy 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: And provided further, That for the fiscal years beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, 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: 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 a taxpayer pursuant to the provisions of section four, article two of this chapter: Provided, however, That for the fiscal year beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, 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: 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, and for the fiscal years beginning on the first day of July, two thousand six, two thousand seven, and two thousand eight, 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;
3. More than $100,000, but not more than $250,000;
4. More than $250,000, but not more than $500,000;
5. More than $500,000, but not more than $1,000,000; and
6. More than $1,000,000.

CHAPTER 11. TAXATION.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43. Dedication of corporation net income tax proceeds.
(a) There is hereby dedicated for the fiscal years beginning on the first day of July, two thousand six, two thousand seven and two thousand eight, an annual amount of ten million dollars from annual collections of the tax imposed by this article for payment of the unfunded liability created by the one-time supplement of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

(b) Notwithstanding any other provision of this code to the contrary, on the first day of October of two thousand six, two thousand seven and two thousand eight, ten million dollars from collections of the tax imposed by this article shall be deposited with the reserves of the public employees retirement and state teachers retirement systems in such allocations as the consolidated public retirement board finds to be necessary and advantageous in funding the one-time supplements of certain annuitants as provided in section twenty-two-i, article ten, chapter five and section twenty-six-t, article seven-a, chapter eighteen of this code.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the effective date of this section and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the effective date of this section.

(b) The one-time supplement provided for in this section applies only to members who have retired at least five years
prior to the effective date of this section or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to the effective date of this section: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

CHAPTER 197

(Com. Sub. for H. B. 4032 — By Delegates Stalnaker, Browning, Williams, Frederick, Hall, Duke and Manchin)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §5-10D-1 of the Code of West Virginia, 1931, as amended, relating to authorizing the Consolidated Public Retirement Board to recover from a participating employer that fails to pay contributions due in a timely manner, amounts not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule; requiring that any amounts recovered shall be administered in the same manner in which the contributions are required to be administered; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-10D-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.
§5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.

(a) The Consolidated Public Retirement Board is continued to administer all public retirement plans in this state. It shall administer the Public Employees Retirement System established in article ten of this chapter; the Teachers Retirement System established in article seven-a, chapter eighteen of this code; the Teachers Defined Contribution Retirement System created by article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created by article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created by article fourteen-d, chapter seven of this code; and the Judges’ Retirement System created under article nine, chapter fifty-one of this code.

(b) The membership of the Consolidated Public Retirement Board consists of:

1. The Governor or his or her designee;
2. The State Treasurer or his or her designee;
3. The State Auditor or his or her designee;
4. The Secretary of the Department of Administration or his or her designee;
5. Four residents of the state, who are not members, retirants or beneficiaries of any of the public retirement systems, to be appointed by the Governor, with the advice and consent of the Senate; and
6. A member, annuitant or retirant of the Public Employees Retirement System who is or was a state employee; a
member, annuitant or retirant of the Public Employees Retirement System who is not or was not a state employee; a member, annuitant or retirant of the Teachers Retirement System; a member, annuitant or retirant of the West Virginia State Police Death, Disability and Retirement Fund; a member, annuitant or retirant of the Deputy Sheriff Death, Disability and Retirement Fund; and a member, annuitant or retirant of the Teachers Defined Contribution Retirement System all to be appointed by the Governor, with the advice and consent of the Senate.

(c) The appointed members of the board serve five-year terms. A member appointed pursuant to subdivision (6), subsection (b) of this section ceases to be a member of the board if he or she ceases to be a member of the represented system. If a vacancy occurs in the appointed membership, the Governor, within sixty days, shall fill the vacancy by appointment for the unexpired term. No more than five appointees may be of the same political party.

(d) The Consolidated Public Retirement Board has all the powers, duties, responsibilities and liabilities of the Public Employees Retirement System established pursuant to article ten of this chapter; the Teachers Retirement System established pursuant to article seven-a, chapter eighteen of this code; the Teachers Defined Contribution System established pursuant to article seven-b of said chapter; the West Virginia State Police Death, Disability and Retirement Fund created pursuant to article two, chapter fifteen of this code; the West Virginia State Police Retirement System created by article two-a of said chapter; the Deputy Sheriff Death, Disability and Retirement Fund created pursuant to article fourteen-d, chapter seven of this code; and the Judges’ Retirement System created pursuant to article nine, chapter fifty-one of this code and their appropriate governing boards.

(e) The Consolidated Public Retirement Board may propose rules for legislative approval, in accordance with article three,
chapter twenty-nine-a of this code, necessary to effectuate its powers, duties and responsibilities: Provided, That the board may adopt any or all of the rules, previously promulgated, of a retirement system which it administers.

(f) (1) The Consolidated Public Retirement Board shall continue to transfer all funds received for the benefit of the retirement systems within the consolidated pension plan as defined in section three-c, article six-b, chapter forty-four of this code, including, but not limited to, all employer and employee contributions, to the West Virginia Investment Management Board: Provided, That the employer and employee contributions of the Teachers Defined Contribution System, established in section three, article seven-b, chapter eighteen of this code, and voluntary deferred compensation funds invested by the West Virginia Consolidated Public Retirement Board pursuant to section five, article ten-b of this chapter may not be transferred to the West Virginia Investment Management Board.

(2) The board may recover from a participating employer that fails to pay any amount due a retirement system in a timely manner the contribution due and an additional amount not to exceed interest or other earnings lost as a result of the untimely payment, or a reasonable minimum fee, whichever is greater, as provided by legislative rule promulgated pursuant to the provisions of article three, chapter twenty-nine-a of this code. Any amounts recovered shall be administered in the same manner in which the amount due is required to be administered.

(g) Notwithstanding any provision of this code or any legislative rule to the contrary, all assets of the public retirement plans set forth in subsection (a) of this section shall be held in trust. The Consolidated Public Retirement Board is a trustee for all public retirement plans, except with regard to the investment of funds: Provided, That the Consolidated Public
Chapter 198

(Com. Sub. for H. B. 2638 — By Delegates Swartzmiller, Manchin, Stemple, Pethel, Varner, Kominar and Ennis)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §8-22-22a of the Code of West Virginia, 1931, as amended, relating to restrictions on investments by municipal policemen’s and firemen’s pension and relief funds by increasing the amount which may be invested in equities.

Be it enacted by the Legislature of West Virginia:

That §8-22-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN’S PENSION AND RELIEF FUND; FIREMEN’S PENSION
AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.


Moneys invested as permitted by section twenty-two of this article are subject to the following restrictions and conditions contained in this section:

(a) Fixed income securities shall at no time exceed ten percent of the total assets of the pension fund, which are issued by one issuer, other than the United States Government or agencies thereof, whereas this limit shall not apply;

(b) At no time shall the equity portion of the portfolio exceed sixty percent of the total portfolio. Furthermore, the debit or equity securities of any one company or association shall not exceed five percent with a maximum of fifteen percent in any one industry;

(c) Notwithstanding any other provisions of this article, any investments in equities under subsections (g) and (h), section twenty-two of this article shall be subject to the following additional guidelines:

(1) Equity mutual funds shall be no sales load (front or back) and no contingent deferred sales charges shall be allowed. The total annual operating expense ratio shall not exceed one and three-quarter percent for any mutual fund;

(2) The stated investment policy requires one hundred percent of the equities of the portfolio be that of securities which are listed on the New York Stock Exchange, the American Stock Exchange or the NASDAQ National Market; and
(3) Equity mutual funds may be only of the following fund description stated purpose: Growth funds, growth and income funds, equity income funds, index funds; utilities, funds, balanced funds and flexible portfolio funds.

(d) The board of trustees of each fund shall obtain an independent performance evaluation of the funds at least annually and the evaluation shall consist of comparisons with other funds having similar investment objectives for performance results with appropriate market indices; and

(e) Each entity conducting business for each pension fund, shall fully disclose all fees and costs of transactions conducted on a quarterly basis. Entities conducting business in mutual funds for and on behalf of each pension fund, shall timely file revised prospectus and normal quarterly and annual Securities Exchange Commission reporting documents with the board of trustees of each pension fund.

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CHAPTER 199

(Com. Sub. for S. B.174 — By Senators Foster, Barnes, Lanham, McCabe and Plymale,)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §15-2-31a and §15-2-37 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-2-52, all relating to the State Police Death, Disability and Retirement Fund; clarifying earnings information required; requiring examination of certain records; clarifying substantial gainful activity, establishing
earnings limits and providing for annual adjustment; authorizing benefit termination for and reapplication by disability retirants terminated for failure to maintain eligibility due to income or type of employment; requiring medical exam at applicant’s expense on reapplication; clarifying reinstatement for reenlisting members; and providing for termination and recovery of benefits for misrepresentation.

Be it enacted by the Legislature of West Virginia:

That §15-2-31a and §15-2-37 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 §15-2-52, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-31a. Application for disability benefit; determinations.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

§15-2-52. Termination of benefits; procedures.

§15-2-31a. Application for disability benefit; determinations.

(a) Application for a disability benefit may be made by a member or, if the member is under an incapacity, by a person acting with legal authority on the member’s behalf. After receiving an application for a disability benefit from a member or a person acting with legal authority on behalf of the member, the board shall notify the superintendent of the department that an application has been filed: Provided, That when, in the judgment of the superintendent, a member is no longer physically or mentally fit for continued duty as a member of the West Virginia State Police and the member has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the member on the basis of disability pursuant to rules which may be established by the board. Within thirty days of the superintendent’s
receipt of the notice from the board or the filing of the superintendent’s petition with the board, the superintendent shall forward to the board a statement certifying the duties of the member’s employment, information relating to the superintendent’s position on the work relatedness of the member’s alleged disability, complete copies of the member’s medical file and any other information requested by the board in its processing of the application, if this information is requested timely.

(b) The board shall propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the processing of applications and petitions for disability retirement under this article.

(c) The board shall notify the member and the superintendent of its final action on the disability application or petition within ten days of the board’s final action. The notice shall be sent by certified mail, return receipt requested. If either the member or the superintendent is aggrieved by the decision of the board and intends to pursue judicial review of the board’s decision as provided in section four, article five, chapter twenty-nine-a of this code, the party so aggrieved shall notify the board within twenty days of the member’s or superintendent’s receipt of the board’s notice that they intend to pursue judicial review of the board’s decision.

(d) (1) The board shall require each disability benefit recipient to file an annual certified statement of earnings, to include the amount and source of earnings, and any other information required in legislative rules which may be proposed by the board. The board may waive or modify the requirement that a recipient of total disability benefits file the annual statement of earnings if the board’s physician certifies that the recipient’s disability is ongoing. The board shall annually examine the information submitted by each recipient. If a disability retiree refuses to file a statement and other informa-
tion required by the board, the disability benefit shall be
suspended, after notice and opportunity to be heard, until the
statement and information are filed.

(2) The board shall annually examine any information
available from the State Tax Commissioner on all recipients of
disability benefits pursuant to article ten, chapter eleven of this
code.

(e) (1) A nonblind recipient earning annual income
exceeding the equivalent of eight hundred sixty dollars per
month in the year two thousand six, after impairment-related
work expenses are subtracted from earnings, has engaged in
substantial gainful activity. A statutorily blind recipient has
engaged in substantial gainful activity in the year two thousand
six if the recipient has earned annual income exceeding the
equivalent of one thousand four hundred fifty dollars per month
after impairment-related work expenses are subtracted from
earnings.

(2) The substantial gainful activity dollar limit shall be
automatically adjusted annually to correspond to the dollar limit
as established and published by the United States Social
Security Administration for each year in accordance with
methods published in the Federal Register (FR6582905
December 29, 2000) and similar methods used by the Social
Security Administration applying the average annual wage
index.

(3) If after review of a disability retirant’s annual statement
of earnings, tax records or other financial information, as
required or otherwise obtained by the board, the board deter-
mines that earnings of the recipient of total disability benefits
in the preceding year are sufficient to show that the recipient
engaged in substantial gainful activity, the disability retirant’s
disability annuity shall be terminated by the board, upon
recommendation of the board’s disability review committee and after notice and opportunity to be heard, on the first day of the month following the board’s action.

(4) If the board obtains information that a recipient of partial disability benefits is employed as a law-enforcement officer, upon recommendation of the board’s disability review committee and after notice and an opportunity to be heard, the board shall terminate the recipient’s disability benefits on the first day of the month following the board’s action.

(f) Any person who wishes to reapply for disability retirement and whose disability retirement has been terminated by the board pursuant to this section may do so within ninety days of the effective date of termination: Provided, That any person reapplying for disability benefits shall undergo an examination at the applicant’s expense by an appropriate medical professional selected by the board as part of the reapplication process.

(g) Notwithstanding other provisions in this section, any person whose disability retirement has been terminated by the board pursuant to this section may apply for regular retirement benefits upon meeting the eligibility requirements of age and years of service.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

(a) Any member who is discharged by order of the superintendent or otherwise terminates employment with the department, at the written request of the member to the retirement board, is entitled to receive from the retirement fund a sum equal to the aggregate of the principal amount of moneys deducted from his or her salary and paid into the State Police Death, Disability and Retirement Fund plus four percent
interest compounded thereon calculated annually as provided and required by this article.

(b) Any member withdrawing contributions who may thereafter be reenlisted as a member of the department shall not receive any prior service credit on account of former service, unless following reenlistment the member redeposits in the fund established in article two-a of this chapter the amount of the refund, together with interest thereon at the rate of seven and one-half percent per annum from the date of withdrawal to the date of redeposit, in which case he or she shall receive the same credit on account of his or her former service as if no refund had been made. He or she shall become a member of the retirement system established in article two-a of this chapter.

(c) Every member who completes ten years of service with the department is eligible, upon separation of employment with the department, either to withdraw his or her contributions in accordance with subsection (a) of this section or to choose not to withdraw his or her accumulated contributions with interest. Upon attainment of age sixty-two, a member who chooses not to withdraw his or her contributions is eligible to receive a retirement annuity. Any member choosing to receive the deferred annuity under this subsection is not eligible to receive the annual annuity adjustment provided in section twenty-seven-a of this article. When the retirement board retires any member under any of the provisions of this section, the board shall, by order in writing, make an award directing that the member is entitled to receive annually and that there shall be paid to the member from the State Police Death, Disability and Retirement Fund in equal monthly installments during the lifetime of the member while in status of retirement one or the other of two amounts, whichever is greater:

(1) An amount equal to five and one-half percent of the aggregate of salary paid to the member during the whole period of service as a member of the department; or
The annuity shall be payable during the lifetime of the member. The retiring member may choose, in lieu of a life annuity, an annuity in reduced amount payable during the member’s lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse if any, for the spouse’s remaining lifetime after the death of the member. Reduction of this monthly benefit amount shall be calculated to be of equal actuarial value to the life annuity the member could otherwise have chosen.

§15-2-52. Termination of benefits; procedures.

(a) Whenever the board determines that a person seeking benefits under the provisions of this article has made false representation of a material fact in support of applying for or retaining benefits or has falsified or permitted to be falsified any record or records of the retirement system in support of benefits, the board shall terminate any present benefit approved as a result of the false statement or record. In addition, the board shall initiate appropriate action to recover any benefits paid by virtue of the false representation.

(b) Any termination of benefits pursuant to this section may be appealed pursuant to the state administrative procedures act in chapter twenty-nine-a of this code. The board may promulgate rules in accordance with the provisions of article three of said chapter regarding the procedure for termination of benefits and any repayment of benefits.
AN ACT to repeal §18-7A-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-23 and §18-7A-25 of said code, all relating to the State Teachers Retirement System; deleting provisions which allowed for the distribution, without a contributor’s consent, of accumulated contributions to the State Teachers Retirement System to a contributor with fewer than five years of service, who quits service or ceases to be a member; and correcting code references.

Be it enacted by the Legislature of West Virginia:

That §18-7A-24 of the Code of West Virginia, 1931, as amended, be repealed; and that §18-7A-23 and §18-7A-25 of said code be amended and reenacted, all to read as follows:

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.


1 Benefits upon withdrawal from service prior to retirement under the provisions of this article shall be as follows:

3 (a) A contributor who withdraws from service for any cause other than death or retirement shall, upon application, be paid
his or her accumulated contributions plus refund interest up to
the end of the fiscal year preceding the year in which applica-
tion is made, but in no event shall interest be paid beyond the
end of five years following the year in which the last contribu-
tion was made: Provided, That such contributor, at the time of
application, is then no longer under contract, verbal or other-
wise, to serve as a teacher; or

(b) If such contributor has completed twenty years of total
service, he or she may elect to receive at retirement age an
annuity which shall be computed as provided in this article:
Provided, That if such contributor has completed at least five,
but fewer than twenty years of total service in this state, he or
she may elect to receive at age sixty-two an annuity which shall
be computed as provided in this article. The contributor must
notify the retirement board in writing concerning such election.
If such contributor has completed fewer than five years of
service in this state, he or she shall be subject to the provisions
as outlined in subsection (a) above.

Benefits upon the death of a contributor prior to retirement
under the provisions of this article shall be paid as follows:

(1) If the contributor was at least fifty years old, and if his
or her total service as a teacher was at least twenty-five years at
the time of his or her death, then the surviving spouse of the
deceased, provided the spouse is designated as the sole refund
beneficiary, is eligible for an annuity computed as though the
deceased were actually a retired teacher at the time of death,
and had selected a survivorship option which pays the spouse
the same monthly amount which would have been received by
the deceased; or

(2) If the facts do not permit payment under the preceding
paragraph (1), then the following sum shall be paid to the
refund beneficiary of the contributor: The contributor’s
accumulated contributions with refund interest up to the year of
his or her death plus the amount of his or her accumulated contributions. The latter sum shall emanate from the employer’s accumulation fund.

§18-7A-25. Eligibility for retirement allowance.

(a) Any member who has attained the age of sixty years or who has had thirty-five years of total service as a teacher in West Virginia, regardless of age, is eligible for an annuity. No new entrant nor present member is eligible for an annuity, however, if either has less than five years of service to his or her credit.

(b) Any member who has attained the age of fifty-five years and who has served thirty years as a teacher in West Virginia is eligible for an annuity.

(c) Any member who has served at least thirty but less than thirty-five years as a teacher or nonteaching member in West Virginia and is less than fifty-five years of age is eligible for an annuity, but the annuity shall be the reduced actuarial equivalent of the annuity the member would have received if the member were age fifty-five at the time such annuity was applied for.

(d) The request for any annuity shall be made by the member in writing to the retirement board, but in case of retirement for disability, the written request may be made by either the member or the employer.

(e) A member is eligible for annuity for disability if he or she satisfies the conditions in either subdivision (1) or (2) of this subsection and meets the conditions of subdivision (3) of this subsection as follows:

(1) His or her service as a teacher or nonteaching member in West Virginia must total at least ten years and service as a teacher or nonteaching member must have been terminated
because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved.

(2) His or her service as a teacher or nonteaching member in West Virginia must total at least five years and service as a teacher or nonteaching member must have been terminated because of disability, which disability must have caused absence from service for at least six months before his or her application for disability annuity is approved and the disability is a direct and total result of an act of student violence directed toward the member.

(3) An examination by a physician or physicians selected by the Retirement Board must show that the member is at the time mentally or physically incapacitated for service as a teacher, that for that service the disability is total and likely to be permanent and that he or she should be retired in consequence of the disability.

(f) Continuance of the disability of the retired member shall be established by medical examination, as prescribed in subdivision (3), subsection (e) of this section, annually for five years after retirement, and thereafter at such times required by the retirement board. Effective the first day of July, one thousand nine hundred ninety-eight, a member who has retired because of a disability may select an option of payment under the provisions of section twenty-eight of this article: Provided, That any option selected under the provisions of section twenty-eight of this article shall be in all respects the actuarial equivalent of the straight life annuity benefit the disability retiree receives or would receive if the options under said section were not available and that no beneficiary or beneficiaries of the disability annuitant may receive a greater benefit, nor receive any benefit for a greater length of time, than the beneficiary or beneficiaries would have received had the
disability retiree not made any election of the options available under said section. In determining the actuarial equivalence, the board shall take into account the life expectancies of the member and the beneficiary: Provided, however, That the life expectancies may at the discretion of the board be established by an underwriting medical director of a competent insurance company offering annuities. Payment of the disability annuity provided in this article shall cease immediately if the retirement board finds that the disability of the retired teacher no longer exists, or if the retired teacher refuses to submit to medical examination as required by this section.

CHAPTER 201

(S. B. 759 — By Senator Bowman)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to repeal §17-4-17c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and to amend and reenact §17-4-17b and §17-4-17d of said code, all relating to construction of highways and bridges; creating the Highway Design-Build Pilot Program; listing requirements for approval of design-build projects; requiring monthly progress reports on design-build projects; requiring annual reports; revising authority to propose certain rules and requirements; establishing requirements for issuing invitations for bid; requiring a report to the Legislature; creating procedure for removal, relocation or adjustment of utility lines or facilities to accommodate a highway project; requiring notice of need to
remove, relocate or adjust a utility line or facility; requiring removal, relocation or adjustment plans; creating liability for not following plan; and requiring public utility to pay for relocation, removal or adjustment.

Be it enacted by the Legislature of West Virginia:

That §17-4-17c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §17-2D-1, §17-2D-2, §17-2D-3, §17-2D-4 and §17-2D-5; and that §17-4-17b and §17-4-17d of said code, be amended and reenacted, all to read as follows:

ARTICLE 2D. HIGHWAY DESIGN-BUILD PILOT PROGRAM.

§17-2D-1. Short title.

§17-2D-2. Establishment of a Highway Design-Build Pilot Program.

§17-2D-3. Invitation for bids.

§17-2D-4. Acceptance of design-build bid.

§17-2D-5. Report to the Legislature.

§17-2D-1. Short title.

1 This article shall be known and may be cited as the West Virginia Highway Design-Build Pilot Program.

§17-2D-2. Establishment of a Highway Design-Build Pilot Program.

(a) Notwithstanding any provision of this code to the contrary, the Commissioner of the West Virginia Division of Highways may establish a pilot program to expedite the construction of no more than three special projects by combining the design and construction elements of a highway or bridge project into a single contract.

(b) A design-build project may not be let to contract before the first day of January, two thousand seven, and no more than three project may be let to contract in the eighteen months thereafter.
(c) A design-build project may not be let to contract until the commissioner of the division of highways has established policies and procedures concerning design-build projects.

(d) After completion of the third project, no projects shall be commenced unless the West Virginia Legislature either approves additional projects to further study the effectiveness of the design-build process or makes the program permanent.

§17-2D-3. Invitation for bids.

(a) The division shall prepare an invitation for bids for pre-qualified design-builders, which must provide at a minimum:

(1) The procedures to be followed for submitting bids and the procedures for making awards;

(2) The proposed general terms and conditions for the design-build contract;

(3) The description of the drawings, specifications or other information to be submitted with the bid, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(4) A proposed time schedule commencement and completion of the design-build contract;

(5) Budget limits for the design-build contract, if any;

(6) Requirements or restrictions for the subletting of specific portions of the design-build contract, if any; and

(7) Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers’ compensation coverage.
(b) The division shall make available to the qualified design-builders, approved subcontractors, suppliers and sureties, as applicable, additional information 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.

(c) The division shall set forth its needs with sufficient clarity to assure that there is a comprehensive understanding of the project's scope and requirement.

§17-2D-4. Acceptance of design-build bid.

(a) The design-builder shall submit the bid to the division as required in the invitation for bids.

(b) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract.

(c) The selection committee may choose to reject all bids. If the selection committee chooses to accept a bid, the committee shall award the project to the qualified design-builder based on low bid or a value-based selection process combining technical qualifications and competitive bidding elements. The selection committee shall ascertain that the submissions comply with the requirements of this article and the policies and procedures of the commissioner.

§17-2D-5. Report to the Legislature.

On or before the first day of December, two thousand eight, the commissioner shall prepare and submit to the Joint Standing Committee on Government Organization a report evaluating the experience of the division of highways with each project, including whether the division realized any cost or time
§ 17-4-17b. Relocation of public utility lines on highway construction projects.

(a) Whenever the division reasonably determines that any public utility line or facility located upon, across or under any portion of a state highway needs to be removed, relocated or adjusted in order to accommodate a highway project, the division shall give to the utility sixty (60) days’ written notice directing it to begin the physical removal, relocation or adjustment of such utility obstruction or interference. If such notice is in conjunction with a highway improvement project, it will be provided at the date of advertisement or award. Prior to the notice directing the physical removal, relocation or adjustment of a utility line or facility, the utility shall adhere to the division’s utility relocation procedures for public road improvements which shall include, but not be limited to, the following:

(1) The division will submit to the utility a letter and a set of plans for the proposed highway improvement project;

(2) The utility must, within twenty (20) days, submit to the division a written confirmation acknowledging receipt of the plans and a declaration of whether or not its facilities are within the proposed project limits and the extent to which the facilities are in conflict with the project;

(3) If the utility is adjusting, locating or relocating facilities or lines from or into the division’s right-of-way, the utility must
submit to the division plans showing existing and proposed
locations of utility facilities. These utility plans must be
submitted to the division within thirty (30) days of receipt of
the highways plans or such longer time as may be provided in
the letter accompanying the highway plans.

(4) The utility’s submission shall include with the plans a
working time analysis demonstrating that the utility adjustment,
location or relocation will be accomplished in a manner and
time frame established by the division’s written procedures and
instructions. Such working time plan shall specify the order and
calendar days for removal, relocation or adjustment of the
utility from or within the project site and any staging property
acquisition, compensable work or other special requirements
needed to complete the removal, relocation or adjustment. The
division may approve the work plan, including any requests for
compensation, submitted by a utility for a highway improve-
ment project if it is submitted within the established schedule
and does not adversely affect the letting date. The division will
review the work plan to ensure compliance with the proposed
improvement plans and schedule.

(b) If the utility does not thereafter begin removal within
the time specified in the work plan, the division may give the
utility a final notice directing that such removal shall com-
mence not later than ten (10) days from the receipt of such final
notice. If the utility does not, within the ten (10) days from
receipt of the final notice, begin to remove or relocate the
facility or, having so begun removal or relocation, thereafter
fails to complete the removal or relocation within the time
specified by the work plan, the division may remove or relocate
the same with its own employees or by employing or contract-
ing for the necessary engineering, labor, tools, equipment,
supervision, materials and other necessary services to accom-
plish the removal or relocation, and the expenses of such
removal may be paid and collected as provided at law. If
additional utility removal, relocation, or adjustment work is found necessary after the letting date of the highway improvement project, the utility shall provide a revised work plan within thirty (30) calendar days after becoming aware of such additional work or upon receipt of the division’s written notification advising of such additional work. The utility’s revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement.

(c) In addition to the foregoing, the owner of the utility shall be responsible for and liable to the division or its contractors for damages resulting from its failure to comply with the submitted and approved work plan. If the utility owner fails to provide a work plan or fails to complete the removal, relocation, or adjustment of its facilities in accordance with the work plan approved by the division, the owner shall be liable to the contractor for all delay costs and liquidated damages incurred by the contractor which are caused by or which grow out of the failure of the utility owner to provide a work plan or a revised work plan or to complete its work in accordance with the approved work plan. The division may withhold approval of permits for failure of the utility owner to comply with the requirements of this section.

§17-4-17d. Relocation of public utility lines and public service districts utility lines on state highway construction projects.

Whenever the Commissioner of Highways determines that any public utility line owned by a county or municipal governmental body located upon, across or under any portion of a state highway needs to be relocated in order to accommodate a highway project for which proportionate reimbursement of the cost is not available from any federal program, the commissioner shall notify the public utility owning or operating the facility which shall relocate the same in accordance with this
section, and the cost of the relocation shall be paid out of the 
state road fund.

AN ACT to amend and reenact §5-5-1 of the Code of West Virginia, 
1931, as amended, relating to expanding eligibility for certain 
incremental salary increases to certain higher education employ-
ees.

Be it enacted by the Legislature of West Virginia:

That §5-5-1 of the Code of West Virginia, 1931, as amended, be 
amended and reenacted to read as follows:

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-1. Definitions.

1 For the purposes of this article:

2 (a) “Eligible employee” means:

3 (1) Any regular full-time employee of the state or any 
spending unit of the state who is eligible for membership in any 
state retirement system of the State of West Virginia or other 
retirement plan authorized by the state: Provided, That the
mandatory salary increase required by this article does not apply to any employee of the state whose compensation is fixed by statute or by statutory schedule other than employees described in this section. Clerks, deputy clerks and magistrate assistants of magistrate courts are eligible for the incremental salary increases provided in this article with the increases to be allowable in addition to the maximum salaries and compensation for the employee offices under the magistrate court system statutes of article one, chapter fifty of this code. This article may not be construed to mandate an increase in the salary of any elected or appointed officer of the state;

(2) Any classified employee as defined in section two, article nine, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the Council for Community and Technical College Education; or

(3) Any full-time faculty member as defined in section one, article eight, chapter eighteen-b of this code who is an employee of a state institution of higher education, the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education.

(b) “Years of service” means full years of totaled service as an employee of the State of West Virginia. For full-time faculty as defined in this section, each nine or more months of contracted employment during a fiscal year equals one full year of service; and

(c) “Spending unit” means any state office, department, agency, board, commission, institution, bureau or other designated body authorized to hire employees.
AN ACT to amend and reenact §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §9A-1-5 of said code; to amend and reenact §15-2-2 of said code; to amend and reenact §16-5P-5 of said code; to amend and reenact §17-2A-3 of said code; to amend and reenact §18-3-1 of said code; to amend and reenact §19-1A-5 of said code; to amend and reenact §20-1-5 of said code; to amend and reenact §21-1-2 of said code; to amend and reenact §21A-4-5 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-1-1 of said code; to amend and reenact §29-12-5 of said code; to amend and reenact §33-2-2 of said code; and to amend and reenact §60-2-9 of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9A-1-5 of said code be amended and reenacted; that §15-2-2 of said code be amended and reenacted; that §16-5P-5 of said code be amended and reenacted; that §17-2A-3 of said code be amended and reenacted; that §18-3-1 of said code be amended and reenacted; that §19-1A-5 of said code be amended and reenacted; that §20-1-5 of said code be amended and reenacted; that §21-1-2 of said code be amended and reenacted; that
§21A-4-5 of said code be amended and reenacted; that §22-1-6 of said code be amended and reenacted; that §29-1-1 of said code be amended and reenacted; that §29-12-5 of said code be amended and reenacted; that §33-2-2 of said code be amended and reenacted; and that §60-2-9 of said code be amended and reenacted, all to read as follows:

Chapter
  9A.  Veterans' Affairs.
  15.  Public Safety.
  17.  Roads and Highways.
  18.  Education.
  19.  Agriculture.
  20.  Natural Resources.
  21A. Unemployment Compensation.
  22.  Environmental Resources.
  29.  Miscellaneous Boards and Officers.
  33.  Insurance.
  60.  State Control of Alcoholic Liquors.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

§6-7-2. Salaries of certain state officers.

1 (a) Beginning in the calendar year two thousand five, and
2 for each calendar year after that, salaries for each of the state
3 constitutional officers are as follows:

4 (1) The salary of the Governor is ninety-five thousand
5 dollars per year;
(2) The salary of the Attorney General is eighty thousand dollars per year;

(3) The salary of the Auditor is seventy-five thousand dollars per year;

(4) The salary of the Secretary of State is seventy thousand dollars per year;

(5) The salary of the Commissioner of Agriculture is seventy-five thousand dollars per year; and

(6) The salary of the State Treasurer is seventy-five thousand dollars per year.

(b) Notwithstanding the provisions of subsection (a) of this section, beginning in the calendar year two thousand nine, and for each calendar year thereafter, salaries for each of the state constitutional officers shall be as follows:

(1) The salary of the Governor shall be one hundred fifty thousand dollars per year;

(2) The salary of the Attorney General shall be ninety-five thousand dollars per year;

(3) The salary of the Auditor shall be ninety-five thousand dollars per year;

(4) The salary of the Secretary of State shall be ninety-five thousand dollars per year;

(5) The salary of the Commissioner of Agriculture shall be ninety-five thousand dollars per year; and

(6) The salary of the State Treasurer shall be ninety-five thousand dollars per year.
§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, Division of Highways, ninety-two thousand five hundred dollars; Commissioner, Division of Corrections, eighty thousand dollars; Director, Division of Natural Resources, seventy-five thousand dollars; Superintendent, State Police, eighty-five thousand dollars; Director, Division of Natural Resources, seventy-five thousand dollars; Collector, Division of Banking, seventy-five thousand dollars; Commissioner, Division of Culture and History, sixty-five thousand dollars; Superintendent, State Police, eighty-five thousand dollars; Director, Division of Personnel, seventy thousand dollars; Chairman,
Health Care Authority, eighty thousand dollars; members, Health Care Authority, seventy thousand dollars; Director, Human Rights Commission, fifty-five thousand dollars; Commissioner, Division of Labor, seventy thousand dollars; Director, Division of Veterans' Affairs, sixty-five thousand dollars; Chairperson, Board of Parole, fifty-five thousand dollars; members, Board of Parole, fifty thousand dollars; members, Employment Security Review Board, seventeen thousand dollars; and Commissioner, Bureau of Employment Programs, seventy-five thousand dollars. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, ninety-five thousand dollars; Transportation, ninety-five thousand dollars; Revenue, ninety-five thousand dollars; Military Affairs and Public Safety, ninety-five thousand dollars; Administration, ninety-five thousand dollars; Education and the Arts, ninety-five thousand dollars; Commerce, ninety-five thousand dollars; and Environmental Protection, ninety-five thousand dollars: Provided, That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and, prior to the first day of July, two thousand six, each of the state officers named in this subsection shall continue to receive the annual salaries he or she was receiving as of the effective date of the enactment of this section in two thousand six, and shall thereafter, notwithstanding any other provision of this code to the contrary, be paid an annual salary as follows:
Director, Board of Risk and Insurance Management, eighty thousand dollars; Director, Division of Rehabilitation Services, seventy thousand dollars; Executive Director, Educational Broadcasting Authority, seventy-five thousand dollars; Secretary, Library Commission, seventy-two thousand dollars; Director, Geological and Economic Survey, seventy-five thousand dollars; Executive Director, Prosecuting Attorneys Institute, seventy thousand dollars; Executive Director, Public Defender Services, seventy thousand dollars; Commissioner, Bureau of Senior Services, seventy-five thousand dollars; Director, State Rail Authority, sixty-five thousand dollars; Executive Director, Women’s Commission, forty-five thousand dollars; Director, Hospital Finance Authority, thirty-five thousand dollars; member, Racing Commission, twelve thousand dollars; Chairman, Public Service Commission, eighty-five thousand dollars; members, Public Service Commission, eighty-five thousand dollars; Director, Division of Forestry, seventy-five thousand dollars; Director, Division of Juvenile Services, eighty thousand dollars; and Executive Director, Regional Jail and Correctional Facility Authority, eighty thousand dollars: Provided, That any increase in the salary of any current appointive state officer named in this subsection pursuant to the reenactment of this subsection during the regular session of the Legislature in two thousand six that exceeds five thousand dollars shall be paid to such officer or his or her successor beginning on the first day of July, two thousand six, in annual increments of five thousand dollars per fiscal year, up to the maximum salary provided in this subsection.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the
respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

Prior to the first day of July, two thousand six, each such named appointive state officer shall continue to receive the annual salaries they were receiving as of the effective date of the enactment of this section in two thousand six, and thereafter, notwithstanding any other provision of this code to the contrary, the annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, ninety-two thousand five hundred dollars; Commissioner, Insurance Commission, ninety-two thousand five hundred dollars; Director, Lottery Commission, ninety-two thousand five hundred dollars; Director, Division of Homeland Security and Emergency Management, sixty-five thousand dollars; and Adjutant General, ninety-two thousand five hundred dollars;

(d) No increase in the salary of any appointive state officer pursuant to this section shall be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 9A. VETERANS’ AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS’ AFFAIRS.
§9A-1-5. Compensation of director, veterans’ affairs officers, assistants and employees; payment to Veterans’ Council members; traveling expenses; meetings of Veterans’ Council.

The director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and necessary traveling expenses incident to the performance of his or her duties. The salaries of the veterans’ affairs officers, assistants and employees shall be fixed by the Veterans’ Council. The members of the Veterans’ Council shall receive no salary, but each member shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. The requisition for such expenses and traveling expenses shall be accompanied by a sworn and itemized statement, which shall be filed with the Auditor and permanently preserved as a public record. The Veterans’ Council shall hold its initial meeting on the call of the Governor, and thereafter shall meet on the call of its chairman, except as otherwise provided. With the exception of the first three meetings of the Veterans’ Council, none of which shall be of a duration longer than two weeks each, for organizational purposes, the Veterans’ Council shall meet not more than once every two months at such times as may be determined by and upon the call of the chairman for a period of not more than two days, unless there should be an emergency requiring a special meeting or for a longer period and so declared and called by the Governor or by the chairman with the approval of the Governor. A majority of the members of the Veterans’ Council shall constitute a quorum for the conduct of official business.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.
§15-2-2. Superintendent; departmental headquarters; continuation of the State Police.

The Department of Public Safety, heretofore established, shall be continued and hereafter shall be known as the West Virginia State Police. Wherever the words "Department of Public Safety" or "Division of Public Safety" appear in this code, they shall mean the West Virginia State Police. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint a superintendent to be the executive and administrative head of the department. The superintendent shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code. The superintendent shall hold the rank of colonel and is entitled to all rights, benefits and privileges of regularly enlisted members. On the date of his or her appointment, the superintendent shall be at least thirty years of age. Before entering upon the discharge of the duties of his or her office, he or she shall execute a bond in the penalty of ten thousand dollars, payable to the State of West Virginia and conditioned upon the faithful performance of his or her duties. Such bond both as to form and security shall be approved as to form by the Attorney General and to sufficiency by the Governor.

Before entering upon the duties of his or her office, the superintendent shall subscribe to the oath hereinafter provided. The headquarters of the department shall be located in Kanawha County.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-5. Compensation; traveling expenses.

The Commissioner of the Bureau of Senior Services shall receive an annual salary as provided in section two-a, article
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CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.


The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code. He or she shall be allowed and paid necessary traveling expenses incident to the performance of his or her duties. Statements covering such expenses shall be itemized and verified by the commissioner.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

There shall be appointed by the state board a State Superintendent of Schools who shall serve at the will and pleasure of the state board. He or she shall be a person of good moral character, of recognized ability as a school administrator, holding at least a master’s degree in educational administration, and shall have had not less than five years of experience in public school work. He or she shall receive an annual salary set by the state board, to be paid monthly: Provided, That the annual salary may not exceed one hundred forty-six thousand dollars: Provided, however, That after the thirtieth day of June, two thousand six, the annual salary may not exceed one hundred seventy-five thousand dollars. The state superin-
The state superintendent shall have his or her office at the State Capitol. The state board shall report to the Legislative Oversight Commission on Education Accountability upon request concerning its progress during any hiring process for a state superintendent.

The state board annually shall evaluate the performance of the state superintendent and publicly announce the results of the evaluation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of Division of Forestry; appointment; qualifications.

The Director of the Division of Forestry shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall serve at the will and pleasure of the Governor. The director shall be a graduate of a school of forestry accredited by the Society of American Foresters and have a minimum of ten years’ experience in forest management. The director shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code: Provided, That the director’s salary shall be paid solely from budget appropriations to the division.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

The director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code, payable in
equal monthly installments and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, he or she shall take and subscribe to the oath required of public officers by the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars, which executed oath and bond shall be filed in the office of the Secretary of State.

Premiums on the bond shall be paid from division funds.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

The state Commissioner of Labor shall be appointed by the Governor, by and with the advice and consent of the Senate. He or she shall be a competent person, who is identified with the labor interests of the state. The Commissioner of Labor in office on the effective date of this section shall, unless sooner removed, continue to serve until his or her term expires and his or her successor has been appointed and has qualified. On or before the first day of April, one thousand nine hundred forty-one, and on or before the first day of April of each fourth year thereafter, the Governor shall appoint a Commissioner of Labor to serve for a term of four years, commencing on said first day of April. The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-5. Compensation and travel expenses.
Each member of the board shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and the necessary traveling expenses incurred in the performance of his or her duties.

Requisition for traveling expenses shall be accompanied by a sworn and itemized statement which shall be filed with the Auditor and preserved as a public record.

The salaries and expenses of the members shall be paid from the administration fund.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

(a) The secretary is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the secretary shall organize the department into such offices, sections, agencies and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with
such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the secretary by this chapter, the secretary is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the “Department of Environmental Protection” any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted
to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department pursuant to the provisions of chapter five-f of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the division is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the division is charged with enforcing;

(4) Acquire for the state in the name of the “Department of Environmental Protection” by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Department of Environmental Protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in property;

(5) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and
expenses incidental to such educational programs, training, and instruction. Eligibility for participation by employees will be in accordance with guidelines established by the secretary;

(6) Issue certifications required under 33 U. S. C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney General for legal assistance and representation as provided by law.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least thirty years old and must be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The secretary must have at least a bachelor’s degree in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the secretary will be responsible upon assumption of the office. The secretary may
not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as secretary in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The secretary shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and will be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond will be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued; sections and commissions; purposes; definitions; effective date.

(a) The Division of Culture and History and the office of Commissioner of Culture and History heretofore created are hereby continued. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the commissioner, who shall be the chief executive officer of the division and shall be paid an annual salary as provided in section two-a, article seven, chapter six of this code. The commissioner so
appointed shall have: (1) A bachelor’s degree in one of the fine arts, social sciences, library science or a related field; or (2) four years’ experience in the administration of museum management, public administration, arts, history or a related field.

(b) The division shall consist of five sections as follows:

(1) The arts section;

(2) The archives and history section;

(3) The museums section;

(4) The historic preservation section; and

(5) The administrative section.

(c) The division shall also consist of two citizens commissions as follows:

(1) A Commission on the Arts; and

(2) A Commission on Archives and History.

(d) The commissioner shall exercise control and supervision of the division and shall be responsible for the projects, programs and actions of each of its sections. The purpose and duty of the division is to advance, foster and promote the creative and performing arts and crafts, including both indoor and outdoor exhibits and performances; to advance, foster, promote, identify, register, acquire, mark and care for historical, prehistorical, archaeological and significant architectural sites, structures and objects in the state; to encourage the promotion, preservation and development of significant sites, structures and objects through the use of economic development activities such as loans, subsidies, grants and other incentives; to coordinate all cultural, historical and artistic activities in state
government and at state-owned facilities; to acquire, preserve
and classify books, documents, records and memorabilia of
historical interest or importance; and, in general, to do all things
necessary or convenient to preserve and advance the culture of
the state.

(e) The division shall have jurisdiction and control and may
set and collect fees for the use of all space in the building
presently known as the West Virginia Science and Culture
Center, including the deck and courtyards forming an integral
part thereof; the building presently known as West Virginia
Independence Hall in Wheeling, including all the grounds and
appurtenances thereof; “Camp Washington Carver” in Fayette
County, as provided in section fourteen of this article; and any
other sites as may be transferred to or acquired by the division.
Notwithstanding any provision of this code to the contrary,
including the provisions of article one, chapter five-b of this
code, beginning on and after the first day of July, one thousand
nine hundred ninety-three, the division shall have responsibility
for, and control of, all visitor touring and visitor tour guide
activities within the State Capitol Building at Charleston.

(f) For the purposes of this article, “commissioner” means
the Commissioner of Culture and History, and “division” means
the Division of Culture and History.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a)(1) The board has, without limitation and in its discretion
as it seems necessary for the benefit of the insurance program,
general supervision and control over the insurance of state
property, activities and responsibilities, including:

(A) The acquisition and cancellation of state insurance;

(B) Determination of the kind or kinds of coverage;
(C) Determination of the amount or limits for each kind of coverage;

(D) Determination of the conditions, limitations, exclusions, endorsements, amendments and deductible forms of insurance coverage;

(E) Inspections or examinations relating to insurance coverage of state property, activities and responsibilities;

(F) Reinsurance; and

(G) Any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of such state property, activities and responsibilities.

(2) The board shall endeavor to secure reasonably broad protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper, adequate, available and affordable insurance coverage and through the introduction and employment of sound and accepted principles of insurance, methods of protection and principles of loss control and risk.

(3) The board is not required to provide insurance for every state property, activity or responsibility.

(4) Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the State of West Virginia against claims or suits: Provided, That nothing herein shall bar a state agency or state instrumentality from relying on the constitutional immunity granted the State of West Virginia against claims or suits arising from or out of any state property, activity or responsibility not covered by a policy or policies of insurance: Provided, however, That nothing herein shall bar the insurer of political subdivisions
from relying upon any statutory immunity granted such political subdivisions against claims or suits.

(5) The board shall make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction and any other objectives or factors affecting or which might affect the insurance protection and coverage required.

(6) The board shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the State Fire Marshal's office in applying the rules of that office insofar as the appropriations and other factors peculiar to state property will permit.

(7) The board may negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and damages to covered state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. Any discussion or consideration of the financial or personal information of an insured may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code.

(8) The board may employ an executive director and such other employees, including legal counsel, as may be necessary to carry out its duties. The executive director shall receive an annual salary as provided in section two-a, article seven, chapter six of this code. The legal counsel may represent the board before any judicial or administrative tribunal and perform such other duties as may be requested by the board.
(9) The board may enter into any contracts necessary to the execution of the powers granted to it by this article or to further the intent of this article.

(10) The board may make rules governing its functions and operations and the procurement of state insurance. Except where otherwise provided by statute, rules of the board are subject to the provisions of article three, chapter twenty-nine-a of this code.

(11) The funds received by the board, including, but not limited to, state agency premiums, mine subsidence premiums and political subdivision premiums, shall be deposited with the West Virginia Investment Management Board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund as applicable.

(b) (1) Definitions. — The following words and phrases when used in this subsection, for the purposes of this subsection, have the meanings respectively ascribed to them in this subsection;

(A) “Political subdivision” has the same meaning as in section three, article twelve-a of this chapter;

(B) “Charitable” or “public service organization” means any hospital in this state which has been certified as a critical access hospital by the federal Centers for Medicare and Medicaid upon the designation of the state Office of Rural Health Policy, the Office of Community and Rural Health Services, the Bureau for Public Health or the Department of Health and Human Resources and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or
association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office; and

(C) “Emergency medical service agency” has the same meaning as in section three, article four-c, chapter sixteen of this code.

(2) If requested by a political subdivision, a charitable or public service organization or an emergency medical services agency, the board may, but is not required to, provide property and liability insurance to insure the property, activities and responsibilities of the political subdivision, charitable or public service organization or emergency medical services agency. The board may enter into any contract necessary to the execution of the powers granted by this article or to further the intent of this article.

(A) Property insurance provided by the board pursuant to this subsection may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.

(B) The cost of insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section, if an emergency medical services agency is a for-profit entity, its claims history may not adversely affect other participants’ rates in the same class.

(c)(1) The board has general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provi-
sions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.

(2) The board shall:

(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high-risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high-risk medical liability program. The board may utilize review panels, including, but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high-risk medical liability program activity during the preceding fiscal year, each summary to be included in the Board of Risk and Insurance Management audited financial statements as “other financial information” and which shall include a balance sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;
(E) Determine and annually review the claims history debit or surcharge for the high-risk medical liability program;

(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high-risk medical liability program;

(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high-risk medical liability program and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including, but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associated cost-benefit analysis, recommendations on additional funding of other state-run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;

(I) Establish a five-year financial plan to ensure an adequate premium base to cover the long-tail nature of the claims-made coverage provided by the preferred medical liability program and the high-risk medical liability program. The plan shall be designed to meet the program’s estimated total financial requirements, taking into account all revenues projected to be made available to the program and apportioning necessary costs equitably among participating classes of health care providers.

For these purposes, the board shall:
(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements of the program for each fiscal year and to review and render written professional opinions as to financial plans proposed by the board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the board or the executive director. All reasonable fees and expenses for actuarial services shall be paid by the board. Any financial plan or modifications to a financial plan approved or proposed by the board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the governor and to the Legislature without the actuary’s written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs, including incurred but not reported claims, for the fiscal year for which the plan is proposed. The actuary’s opinion for any fiscal year shall include a requirement for establishment of a reserve fund;

(ii) Submit its final, approved five-year financial plan, after obtaining the necessary actuary’s opinion, to the governor and to the Legislature no later than the first day of January preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the executive director on the first day of July of the fiscal year. In addition to each final, approved financial plan required under this section, the board shall also simultaneously submit an audited financial statement based on generally accepted accounting practices (GAAP) and which shall include allowances for incurred but not reported claims: Provided, That the financial statement and the accrual-based financial plan restatement shall not affect the approved financial plan. The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section;
(iii) Submit to the governor and the Legislature a prospective five-year financial plan beginning on the first day of January, two thousand three, and every year thereafter, for the programs established by the provisions of article twelve-b of this chapter. Factors that the board shall consider include, but shall not be limited to, the trends for the program and the industry; claims history, number and category of participants in each program; settlements and claims payments; and judicial results;

(iv) Obtain annually certification from participants that they have made a diligent search for comparable coverage in the voluntary insurance market and have been unable to obtain the same;

(J) Meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the medical liability programs established in article twelve-b of this chapter. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of these programs for the current fiscal year are met;

(K) To analyze the benefit of and necessity for excess verdict liability coverage;

(L) Consider purchasing reinsurance, in the amounts as it may, from time to time, determine is appropriate, and the cost thereof shall be considered to be an operating expense of the board;

(M) Make available to participants optional extended reporting coverage or tail coverage: Provided, That, at least five working days prior to offering such coverage to a participant or participants, the board shall notify the President of the Senate
and the Speaker of the House of Delegates in writing of its intention to do so and such notice shall include the terms and conditions of the coverage proposed;

(N) Review and approve, reject or modify rules that are proposed by the executive director to implement, clarify or explain administration of the preferred medical liability program and the high-risk medical liability program. Notwithstanding any provisions in this code to the contrary, rules promulgated pursuant to this paragraph are not subject to the provisions of sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The board shall comply with the remaining provisions of article three and shall hold hearings or receive public comments before promulgating any proposed rule filed with the Secretary of State: Provided, That the initial rules proposed by the executive director and promulgated by the board shall become effective upon approval by the board notwithstanding any provision of this code;

(O) Enter into settlements and structured settlement agreements whenever appropriate. The policy may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the policyholder. The board may own or assign any annuity purchased by the board to a company licensed to do business in the state;

(P) Refuse to provide insurance coverage for individual physicians whose prior loss experience or current professional training and capability are such that the physician represents an unacceptable risk of loss if coverage is provided;

(Q) Terminate coverage for nonpayment of premiums upon written notice of the termination forwarded to the health care provider not less than thirty days prior to termination of coverage;
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(R) Assign coverage or transfer insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier with the comparable coverage conditions as determined by the board. Any transfer of obligation or risk shall effect a novation of the transferred contract of insurance and if the terms of the assumption reinsurance agreement extinguish all liability of the board and the State of West Virginia, such extinguishment shall be absolute as to any and all parties; and

(S) Meet and consult with and consider recommendations from the Medical Malpractice Advisory Panel established by the provisions of article twelve-b of this chapter.

(d) If, after the first day of September, two thousand two, the board has assigned coverages or transferred all insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party medical professional liability insurance carrier, and the board otherwise has no covered participants, then the board shall not thereafter offer or provide professional liability insurance to any health care provider pursuant to the provisions of subsection (c) of this section or the provisions of article twelve-b of this chapter unless the Legislature adopts a concurrent resolution authorizing the board to reestablish medical liability insurance programs.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

The commissioner shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and actual expenses incurred in the performance of official business, which compensation shall be in full for all services. The office of the commissioner shall be maintained in the
6 capitol or other suitable place in Charleston. The commissioner
7 may employ such persons and incur such expenses as may be
8 necessary in the discharge of his duties and shall fix the
9 compensation of such employees, but such compensation shall
10 not exceed the appropriation therefor. The commissioner may
11 reimburse employees for reasonable expenses incurred for
12 job-related training and educational seminars and courses. All
13 compensation for salaries and expenses of the commissioner
14 and his employees shall be paid monthly out of the State
15 Treasury by requisition upon the Auditor, properly certified by
16 the commissioner.

CHAPTER 60. STATE CONTROL
OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.


1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code, and shall be paid actual and necessary traveling expenses
4 incurred in performance of the official duties of the office.

CHAPTER 204

(H. B. 4842 — By Delegates Proudfoot, Amores, Craig and Trump)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §20-3A-2 and §20-3A-5 of the Code
of West Virginia, 1931, as amended; and to amend said code by
adding thereto a new section, designated §20-3A-9, all relating to the Skiing Responsibility Act; amending and adding definitions; modifying duties of ski skiers; and adding provisions relating to ski competitions.

Be it enacted by the Legislature of West Virginia:

That §20-3A-2 and §20-3A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §20-3A-9, all to read as follows:

ARTICLE 3A. SKIING RESPONSIBILITY ACT.


1 Unless the context of usage clearly requires otherwise:

2 (a) “Aerial passenger tramway” means any device operated by a ski area operator used to transport passengers, by single or double reversible tramway; chair lift or gondola lift; T-bar lift, J-bar lift, platter lift, conveyor lift or similar device; or a fiber rope tow.

3 (b) “Competitor” means a skier actually engaged in competition, a special event, or training or practicing for competition or a special event on any portion of the area made available by the ski area operator.

4 (c) “Freestyle terrain” includes, but is not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes, and all other constructed and natural features, half-pipes, quarter pipes, and freestyle-bump terrain.
(d) "Passenger" means any person who is lawfully using an aerial passenger tramway, or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in its immediate vicinity.

(e) "Ski area" means any property owned or leased and under the control of the ski area operator or operators within West Virginia.

(f) "Ski area operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, or the State of West Virginia, or any political subdivision thereof, who has operational responsibility for any ski area or aerial passenger tramway.

(g) "Skiing area" means all ski slopes and trails not including any aerial passenger tramway.

(h) "Skier" means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing in locations designated as the ski slopes and trails, but does not include a passenger using an aerial passenger tramway.

(i) "Skiing" means sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device by utilizing any of the facilities of the ski area.

(j) "Ski slopes and trails" means all ski slopes or trails and adjoining skiable terrain, including all their edges and features, and those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing in areas designated for that type of skiing activity. Ski slopes and trails shall be designated on trail maps, if provided, and by signs indicating to the skiing public the designated skiing activity for skiing areas.

(a) It is recognized that skiing as a recreational sport is hazardous to skiers, regardless of all feasible safety measures which can be taken. Each skier expressly assumes the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in the sport of skiing including, but not limited to, any injury, loss or damage caused by the following: Variations in terrain including freestyle terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris; collisions with pole lines, lift towers or any component thereof; or, collisions with snowmaking equipment which is marked by a visible sign or other warning implement in compliance with section three of this article. Each skier shall have the sole individual responsibility for knowing the range of his or her own ability to negotiate any ski slope or trail, and it shall be the duty of each skier to ski within the limits of the skier’s own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone. If while actually skiing, any skier collides with any object or person, except an obviously intoxicated person of whom the ski area operator is aware, the responsibility for such collision shall be solely that of the skier or skiers involved and not that of the ski area operator.

(b) No person shall place any object in the skiing area or on the uphill track or any aerial passenger tramway which may cause a passenger or skier to fall.

(c) No skier shall cross the track of any T-bar lift, J-bar lift, platter lift, conveyor lift or similar device, or a fiber rope tow except at a designated location, nor shall any skier place any object in such an uphill track.
(d) No person involved in a skiing accident shall depart the ski area without leaving personal identification, including name and address, with an employee of the ski area operator or without notifying the proper authorities or without obtaining assistance when that person knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) A ski or snowboard used by a skier while skiing or snowboarding shall be equipped with a strap or other device capable of stopping the ski or snowboard should the ski or snowboard detach from the skier. No skier shall fail to wear retention straps or other devices to help prevent runaway skis or snowboards. This requirement shall not apply to cross country skis.

(f) Each skier has the duty to maintain control of his or her speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him or her.

(g) No skier shall ski on a ski slope or trail that has been posted as “Closed.”

(h) No skier shall use any ski slope while such person’s ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance or other drug or while such person is under the influence of alcohol or any controlled substance or other drug.

(i) Each skier has the duty to heed all posted information and other warnings.

(j) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall
have the duty to avoid moving skiers already on the ski slope or trail.


(a) The ski area operator shall, prior to use of any portion of the area made available by the ski area operator, allow each competitor the opportunity to conduct a reasonable visual inspection of the ski slopes and trails or freestyle terrain used in the competition.

(b) The competitor shall be held to assume the risk of all ski slopes and trails or freestyle terrain conditions including, but not limited to, weather and snow conditions; obstacles, course or feature location, construction or layout, freestyle terrain configuration and conditions; and other courses, layouts, or configurations of the area to be used. No liability shall attach to a ski area operator for injury or death to any competitor caused by course, venue, or area conditions that a visual inspection should have revealed or by collisions with other competitors.
tion from the membership of the executive protection section of the West Virginia State Police; providing annual salary schedules and adjusting annual experience increment pay for the West Virginia State Police; and authorizing recovery of compensation from certain members.

Be it enacted by the Legislature of West Virginia:

That §15-2-4 and §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

§15-2-4. Appointment of commissioned officers, noncommissioned officers, other members; temporary and permanent positions.

(a) The superintendent shall appoint, from the enlisted membership of the State Police, a deputy superintendent who shall hold the rank of lieutenant colonel and be next in authority to the superintendent. The superintendent shall appoint, from the enlisted membership of the State Police, the number of other officers and members he or she considers necessary to operate and maintain the executive offices, training school and forensic laboratory; and to keep records relating to crimes and criminals, coordinate traffic safety activities, maintain a system of supplies and accounting and perform other necessary services.

(b) The ranks within the membership of the State Police shall be colonel, lieutenant colonel, major, captain, first lieutenant, second lieutenant, first sergeant, sergeant, corporal,
trooper first class, senior trooper, trooper or cadet trooper. Each
member while in uniform shall wear the insignia of rank as
provided by law and written State Police policies. Members
assigned to the forensic laboratory shall hold the title of trooper,
be classified as criminalists and wear the insignia of classifica-
tion as provided by written State Police policies.

The superintendent may appoint from the membership of
the State Police seventeen principal supervisors who shall
receive the compensation and hold the temporary rank of
lieutenant colonel, major or captain at the will and pleasure of
the superintendent. The superintendent may also appoint from
the membership of the executive protection section of the State
Police two additional supervisors who shall receive the
compensation and hold the temporary rank of first lieutenant
and serve at the will and pleasure of the superintendent.
Appointments are exempt from any eligibility requirements
established by the career progression system: Provided, That
any member appointed from within the executive protection
section of the State Police to the temporary rank of first
lieutenant must have completed a minimum of two years
service within the executive protection section prior to
becoming eligible for such appointment. Any person appointed
to a temporary rank under the provisions of this article remains
eligible for promotion or reclassification under the provisions
of the career progression system if his or her permanent rank is
below that of first lieutenant. Upon the termination of a
temporary appointment by the superintendent, the member may
not be reduced to a rank or classification below his or her
permanent rank or classification, unless the reduction results
from disciplinary action, and remains eligible for subsequent
appointment to a temporary rank.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; bond; leave time for members called to duty in guard or reserves.
(a) The superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The superintendent may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on the first day of November, two thousand five, and continuing until and including the thirtieth day of June, two thousand six, members shall receive annual salaries as follows:

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**SUPERVISORY AND NONSUPERVISORY RANKS**

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,218.50 Mo</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>$2,621.50 Mo</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>$31,922</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>$32,294</td>
</tr>
<tr>
<td>Rank</td>
<td>Annual Salary</td>
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<td>----------------------------------</td>
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</tr>
<tr>
<td>33 Trooper Fourth &amp; Fifth Year</td>
<td>$32,594</td>
</tr>
<tr>
<td>34 Senior Trooper</td>
<td>$34,682</td>
</tr>
<tr>
<td>35 Trooper First Class</td>
<td>$36,770</td>
</tr>
<tr>
<td>36 Corporal</td>
<td>$38,858</td>
</tr>
<tr>
<td>37 Sergeant</td>
<td>$43,034</td>
</tr>
<tr>
<td>38 First Sergeant</td>
<td>$45,122</td>
</tr>
<tr>
<td>39 Second Lieutenant</td>
<td>$47,210</td>
</tr>
<tr>
<td>40 First Lieutenant</td>
<td>$49,298</td>
</tr>
<tr>
<td>41 Captain</td>
<td>$51,386</td>
</tr>
<tr>
<td>42 Major</td>
<td>$53,474</td>
</tr>
<tr>
<td>43 Lieutenant Colonel</td>
<td>$55,562</td>
</tr>
</tbody>
</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**ADMINISTRATION SUPPORT**

**SPECIALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$32,594</td>
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<tr>
<td>II</td>
<td>$34,682</td>
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<td>III</td>
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<tr>
<td>IV</td>
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<tr>
<td>V</td>
<td>$43,034</td>
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<tr>
<td>VI</td>
<td>$45,122</td>
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<tr>
<td>VII</td>
<td>$47,210</td>
</tr>
<tr>
<td>VIII</td>
<td>$49,298</td>
</tr>
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</table>

**ANNUAL SALARY SCHEDULE (BASE PAY)**

**CRIMINALIST CLASSIFICATION**

<table>
<thead>
<tr>
<th>Classification</th>
<th>Annual Salary</th>
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<tbody>
<tr>
<td>I</td>
<td>$32,594</td>
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<td>V</td>
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<td>VII</td>
<td>$47,210</td>
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<tr>
<td>VIII</td>
<td>$49,298</td>
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</tbody>
</table>
Beginning on the first day of July, two thousand six, and continuing until and including the thirtieth day of June, two thousand seven, members shall receive annual salaries as follows:

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### SUPERVISORY AND NONSUPERVISORY RANKS

<table>
<thead>
<tr>
<th>Rank</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,343.50</td>
<td>$28,122</td>
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<tr>
<td>Cadet Trooper After Training</td>
<td>$2,913.17</td>
<td>$34,958</td>
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<tr>
<td>Trooper Second Year</td>
<td></td>
<td>$36,922</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td></td>
<td>$37,294</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td></td>
<td>$37,682</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td></td>
<td>$38,270</td>
</tr>
<tr>
<td>Corporal</td>
<td></td>
<td>$38,858</td>
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<tr>
<td>Sergeant</td>
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<td></td>
<td>$53,474</td>
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<tr>
<td>Lieutenant Colonel</td>
<td></td>
<td>$55,562</td>
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</tbody>
</table>

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### ADMINISTRATION SUPPORT

#### SPECIALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Classification</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
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<tr>
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<td>$49,298</td>
</tr>
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</table>
Ch. 205] STATE POLICE

ANNUAL SALARY SCHEDULE (BASE PAY)

CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
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<th>Annual Salary</th>
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<td>VII</td>
<td>47,210</td>
</tr>
<tr>
<td>VIII</td>
<td>49,298</td>
</tr>
</tbody>
</table>

Beginning on the first day of July, two thousand seven, until and including the thirtieth day of June, two thousand eight, members shall receive annual salaries as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)

SUPERVISORY AND NONSUPERVISORY RANKS

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
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<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,468.50</td>
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<td>Cadet Trooper After Training</td>
<td>3,038.17</td>
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<td>Trooper Second Year</td>
<td>37,922</td>
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<td>Sergeant</td>
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<td>Captain</td>
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<tr>
<td>Lieutenant Colonel</td>
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</tr>
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</table>

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT

SPECIALIST CLASSIFICATION

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<thead>
<tr>
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<tbody>
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</tr>
</tbody>
</table>
129 II ......................................... 38,682
130 III ......................................... 39,270
131 IV ......................................... 39,858
132 V ......................................... 44,034
133 VI ......................................... 46,122
134 VII ......................................... 48,210
135 VIII ........................................ 50,298

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### CRIMINALIST CLASSIFICATION

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<td>48,210</td>
</tr>
<tr>
<td>VIII</td>
<td>50,298</td>
</tr>
</tbody>
</table>

Beginning on the first day of July, two thousand eight, and continuing thereafter, members shall receive annual salaries as follows:

### ANNUAL SALARY SCHEDULE (BASE PAY)

#### SUPERVISORY AND NONSUPERVISORY RANKS

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
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</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,593.50</td>
</tr>
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<td>Cadet Trooper After Training</td>
<td>$3,163.17</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>38,922</td>
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<tr>
<td>Corporal</td>
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<td>Sergeant</td>
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<tr>
<td>First Sergeant</td>
<td>47,122</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>49,210</td>
</tr>
</tbody>
</table>
Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.
receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: At the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of four hundred dollars to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the
number of hours per month which constitute the standard work
month for the members of the West Virginia State Police is
hereby continued. The rule shall further establish, on a
graduated hourly basis, the criteria for receipt of a portion or all
of supplemental payment when hours are worked in excess of
the standard work month. The superintendent shall certify
monthly to the West Virginia State Police’s payroll officer the
names of those members who have worked in excess of the
standard work month and the amount of their entitlement to
supplemental payment. The supplemental payment may not
exceed two hundred thirty-six dollars monthly. The superinten-
dent and civilian employees of the West Virginia State Police
are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except
the superintendent and civilian employees, shall execute, before
entering upon the discharge of his or her duties, a bond with
security in the sum of five thousand dollars payable to the State
of West Virginia, conditioned upon the faithful performance of
his or her duties, and the bond shall be approved as to form by
the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West
Virginia State Police to its members during those members’
participation in the West Virginia State Police Cadet Training
Program pursuant to section eight, article twenty-nine, chapter
thirty of this code, the West Virginia State Police may require
of its members by written agreement entered into with each of
them in advance of such participation in the program that, if a
member should voluntarily discontinue employment any time
within one year immediately following completion of the
training program, he or she shall be obligated to pay to the West
Virginia State Police a pro rata portion of such compensation
equal to that part of such year which the member has chosen not
to remain in the employ of the West Virginia State Police.
(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the Armed Forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 206


[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-9, relating to legislative findings; and limiting the administration of a voluntary contribution fund or similar benefit plan by members and employees of the West Virginia State Police.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §15-2-9, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

(a) The Legislature finds that from the year one thousand nine hundred fifty-one to two thousand three, employees of the West Virginia State Police or its predecessor agencies have operated a voluntary contribution fund. Upon the death of a member or employee of the West Virginia State Police who, upon his or her death, was a member of the contribution fund, active members and employees of the West Virginia State Police who have voluntarily chosen to be members of the fund have been permitted, as an expression of respect and gratitude for the contributions and service of the deceased member in protecting the public, to donate small financial contributions to a designated beneficiary of the deceased member. The contributions were deposited into the contribution fund and the disbursements were made from the fund.

The Legislature further finds, upon the reports of the Legislative Auditor, that over the years, without statutory authority to do so, administrators of the West Virginia State Police and its predecessor agencies assumed control of the administration of the contribution fund, performing or directing the administrative functions necessary to receive contributions to and disbursements from the contribution fund.

The Legislature further finds that the State of West Virginia had not established the contribution fund or any similar benefit plan for the members and employees of the West Virginia State Police or its predecessor agencies, nor approved the same as an official state benefit program or plan in any manner whatsoever. In the absence of the establishment or approval of such a program or plan by the Legislature, the exercise of administrative powers for these purposes is inappropriate.

The Legislature further finds that the contribution fund is not a state program, but a private activity to which individual employees of the West Virginia State Police have committed state time and resources.
The Legislature further finds that the contributions and service of deceased members and employees of the West Virginia State Police merit sincere, dignified and personal voluntary expressions of respect and gratitude from fellow members and employees of the deceased. The Legislature further finds that the continuance of the contribution fund or similar benefit plan for the purposes of facilitating those personal voluntary expressions of respect and gratitude may be appropriate under certain circumstances.

It is therefore the intent of the Legislature to authorize the limited use of staff and other resources incidental to the continued administration of the private contribution fund in accordance with the provisions of this section.

(b) The limited use of State Police staff time, postage, duplicating and incidental resources is authorized in the continued administration of the contribution fund for the purpose of facilitating contributions and disbursements from the fund if the following conditions have been met:

(1) The superintendent has provided each member and employee of the West Virginia State Police a copy of this section and a statement in writing that clearly advises the member or employee that the contribution fund is a private activity established and maintained by members and employees of the West Virginia State Police in their private capacity with limited administration by the West Virginia State Police and is not in any manner a benefit or other plan provided by or on behalf of the State of West Virginia and that participation in the fund or plan is not required, but is only permitted if the member or employee elects to participate on a voluntary basis with no obligation to give nor opportunity for coerced participation and that the purpose of the fund is to facilitate participating members' expressions of admiration, appreciation and bereavement to the survivors of deceased members;
(2) All rosters, records and accounts of the contribution fund are available for public inspection and audit; and

(3) State Police administration is consistent with all applicable federal and state tax requirements.

(c) Membership in the State Police Contribution Fund is voluntary. On or before the thirty-first day of July, two thousand six, members or employees hired between the first day of January, two thousand three, and the effective date of this section may elect to participate in the fund, and within five days of employment or reemployment with the West Virginia State Police, a member or employee may elect to participate in the fund: Provided, That any member of the original contribution fund in good standing upon the effective date of this section shall be presumed to be a member of the contribution fund. A retired member may maintain membership in the fund. A member may terminate membership in the fund at any time, by written notice to the superintendent, or by ceasing to make contributions to the fund. Upon the death of a member of the fund, the superintendent is authorized to collect a contribution not to exceed the sum of five dollars from all personnel participating in the fund, payable to a designated beneficiary of the deceased member. To aid administrative efficiency and ease the burden of participation, the superintendent may collect funds prospectively to cover an estimated number of deaths in a given period: Provided, however, That any such remaining funds credited to a deceased member shall be returned to the member’s designated beneficiary.

(d) Use of coercion in an attempt to influence a West Virginia State Police officer’s or employee’s election to participate in the contribution fund is prohibited and grounds for dismissal from employment.

(e) The superintendent is authorized to establish and maintain a nongovernmental bank account established by
agreement with a bank within the state to receive contributions to and make disbursements from the fund. These receipts are not to be deposited or held in the State Treasury.

(f) The superintendent shall verify any death of a member of the fund and authorize the dissemination of a notice of the death to members of the fund. The superintendent shall use the most cost efficient means of communication available in making these notifications.

(g) The superintendent is authorized to develop a written internal department policy for the operation of the contribution fund, which may include terms and conditions of membership and the development of any necessary forms or agreements for enrollment in the fund and the designation of a beneficiary.

CHAPTER 207

(S. B. 218 — By Senators Bowman, Bailey, Boley, Harrison, Lanham, McCabe, Minear, Weeks and White)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §4-8-6 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Capitol Building Commission.

Be it enacted by the Legislature of West Virginia:

That §4-8-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 8. CAPITOL BUILDING COMMISSION.

§4-8-6. Continuation of the West Virginia Capitol Building Commission.

Pursuant to the provisions of article ten of this chapter, the West Virginia Capitol Building Commission shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.

CHAPTER 208

(S. B. 213 — By Senators Bowman, Bailey, Boley, Harrison, Lanham, McCabe, Minear, Weeks and White)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-10D-8, relating to continuing the West Virginia Consolidated Public Retirement Board.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-10D-8, to read as follows:

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

§5-10D-8. Continuation of the West Virginia Consolidated Public Retirement Board.
Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Consolidated Public Retirement Board shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.

CHAPTER 209

(H. B. 4349 — By Delegates Beane, Ennis, Barker, Manchin, Blair and Frich)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §17A-2-24 of the Code of West Virginia, 1931, as amended, relating to continuing the Division of Motor Vehicles.

Be it enacted by the Legislature of West Virginia:

That §17A-2-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DIVISION OF MOTOR VEHICLES.


Pursuant to the provisions of article ten, chapter four of this code, the Division of Motor Vehicles shall continue to exist, until the first day of July, two thousand twelve, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §18B-16-6b of the Code of West Virginia, 1931 as amended, relating to continuation of the Rural Health Advisory Panel.

Be it enacted by the Legislature of West Virginia:

That §18B-16-6b of the Code of West Virginia, 1931 as amended, be amended and reenacted to read as follows:

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6b. Continuation of advisory panel.

1 Pursuant to the provisions of article ten, chapter four of this code, the Rural Health Advisory Panel shall continue to exist, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.
CHAPTER 211

(H. B. 4392 — By Delegates Beane, Ennis, Walters and Frich)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §19-21A-4a of the Code of West Virginia, 1931, as amended, relating to continuing the State Conservation Committee.

Be it enacted by the Legislature of West Virginia:

That §19-21A-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21A. CONSERVATION DISTRICTS.

*§19-21A-4a. Continuation of the State Conservation Committee.

1 Pursuant to the provisions of article ten, chapter four of this code, the State Conservation Committee shall continue to exist until the first day of July, two thousand twelve, unless sooner terminated, continued or reestablished.

*CLERK’S NOTE: This section was repealed by S. B. 778 (Chapter 38), which passed subsequent to this act.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21A-1-9, relating to continuation of the Division of Unemployment Compensation.

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 §21A-1-9, to read as follows:

ARTICLE 1. UNEMPLOYMENT COMPENSATION.


Pursuant to the provisions of article ten, chapter four of this code, the Division of Unemployment Compensation shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §22-1-4 of the Code of West Virginia, 1931, as amended, relating to continuing the Department of Environmental Protection.

Be it enacted by the Legislature of West Virginia:

That §22-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Department of Environmental Protection continued.

1 Pursuant to the provisions of article ten, chapter four of this code, the Department of Environmental Protection shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished.
CH. 214

SUNSET 1719

CHAPTER 214

(H. B. 4310 — By Delegates Beane, Ennis, Miley, Iaquinta, Walters and Frich)

[Passed March 7, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 16, 2006.]

AN ACT to amend and reenact §29-12-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Risk and Insurance Management.

Be it enacted by the Legislature of West Virginia:

That §29-12-12 of the Code of West Virginia, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-12. Continuation of State Board of Risk and Insurance Management.

1 Pursuant to the provisions of article ten, chapter four of this code, the State Board of Risk and Insurance Management shall continue to exist until the first day of July, two thousand eleven, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §29-18-24 of the Code of West Virginia, 1931, as amended, relating to continuation of the State Rail Authority.

Be it enacted by the Legislature of West Virginia:

That §29-18-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-24. Continuation of State Rail Authority.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia State Rail Authority shall continue to exist until the first day of July, two thousand eleven, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §29-20-7 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Women’s Commission.

Be it enacted by the Legislature of West Virginia:

That §29-20-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. WOMEN’S COMMISSION.

§29-20-7. Continuation of the West Virginia Women’s Commission.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Women’s Commission shall continue until the first day of July, two thousand twelve, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-4-30 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Dental Examiners.

Be it enacted by the Legislature of West Virginia:

That §30-4-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DENTAL EXAMINERS.

§30-4-30. Continuation of the West Virginia Board of Dental Examiners.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Dental Examiners shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-13A-37 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Professional Surveyors.

Be it enacted by the Legislature of West Virginia:

That §30-13A-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-37. Continuation of the West Virginia Board of Professional Surveyors.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Professional Surveyors shall continue to exist until the first day of July, two thousand eleven, unless sooner terminated, continued or reestablished.
CHAPTER 219

(S. B. 217 — By Senators Bowman, Bailey, Boley, Harrison, Lanham, McCabe, Minear, Weeks and White)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §30-14-16 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Osteopathy.

Be it enacted by the Legislature of West Virginia:

That §30-14-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-16. Continuation of the West Virginia Board of Osteopathy.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Osteopathy shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-31-15 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Examiners in Counseling.

Be it enacted by the Legislature of West Virginia:

That §30-31-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of the West Virginia Board of Examiners in Counseling.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Examiners in Counseling shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.
CHAPTER 221

(S. B. 214 — By Senators Bowman, Bailey, Boley, Harrison, Lanham, McCabe, Minear, Weeks and White)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §30-40-28 of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Real Estate Commission.

Be it enacted by the Legislature of West Virginia:

That §30-40-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-28. Continuation of the West Virginia Real Estate Commission.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Real Estate Commission shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §48-26-1102 of the Code of West Virginia, 1931, as amended, relating to continuing the Family Protection Services Board.

Be it enacted by the Legislature of West Virginia:

That §48-26-1102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 26. DOMESTIC VIOLENCE ACT.

§48-26-1102. Continuation of board.

1 Pursuant to the provisions of article ten, chapter four of this code, the Family Protection Services Board shall continue to exist until the first day of July, two thousand twelve, unless sooner terminated, continued or reestablished.
SUNSET LAW

CHAPTER 223

(H. B. 4849 — By Delegates Beane, Ennis, Barker, laquinta, Martin, Yost, Walters, Frich and Porter)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:

That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.
§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
§4-10-5. Termination of agencies following preliminary performance reviews.
§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.
§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

(1) On the first day of July, two thousand seven: Office of Health Facilities Licensure and Certification within the Department of Health and Human Resources; Development Office; Parkways, Economic Development and Tourism Authority; Division of Highways; Division of Personnel; Office of the Insurance Commissioner; Division of Culture and History; Department of Revenue; Department of Health and Human Resources; Department of Environmental Protection; and State Police.

(2) On the first day of July, two thousand eight: Purchasing Division within the Department of Administration; Division of Rehabilitation Services; Division of Corrections; Division of Labor; Investment Management Board; Division of Natural Resources; and Consolidated Public Retirement Board.

(3) On the first day of July, two thousand nine: Office of Judges in Workers’ Compensation; and Public Land Corporation.

(4) On the first day of July, two thousand twelve: Division of Motor Vehicles.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.
The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

(1) On the first day of July, two thousand seven: School Building Authority; and Tourism Commission within the Development Office.

(2) On the first day of July, two thousand eight: James "Tiger" Morton Catastrophic Illness Commission.

§4-10-5. Termination of agencies following preliminary performance reviews.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a preliminary performance review has been conducted upon the agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile Facilities Review Panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public Employees Insurance Agency Advisory Board; Cable Television Advisory Board.

(3) On the first day of July, one thousand nine hundred ninety-nine: Tree Fruit Industry Self-improvement Assessment Program.

(4) On the first day of July, two thousand: Terms of Family Law Master and Family Law Master System.

(5) On the first day of July, two thousand three: Advisory Council on Public Health; Governor’s Office of Fiscal Risk Analysis and Management.
(6) On the first day of July, two thousand four: Workers’ Compensation Appeal Board.

(7) On the first day of July, two thousand five: Clean Coal Technology Council; and Steel Advisory Commission and Steel Futures Program.

(8) On the first day of July, two thousand six: Medical Services Fund Advisory Council; Care Home Advisory Board.

(9) On the first day of July, two thousand seven: Human Rights Commission; Office of Coalfield Community Development; State Fire Commission; Children’s Health Insurance Board; Board of Banking and Financial Institutions; Lending and Credit Rate Board; Governor’s Cabinet on Children and Families; State Geological and Economic Survey; Public Energy Authority and Board; Ron Yost Personal Assistance Services Program; Records Management and Preservation Board; Public Employees Insurance Agency; Office of Explosives and Blasting; Waste Tire Fund; West Virginia Stream Partners Program; Ohio River Valley Water Sanitation Commission; State Lottery Commission; Whitewater Commission within the Division of Natural Resources; and Contractor Licensing Board.

(10) On the first day of July, two thousand eight: Ethics Commission; Public Service Commission; Parks section and parks function of the Division of Natural Resources; Office of Water Resources of the Department of Environmental Protection; Marketing and Development Division of Department of Agriculture; Public Defender Services; Health Care Authority; Public Employees Insurance Agency Finance Board; West Virginia Prosecuting Attorneys Institute; and Design-Build Board.

(11) On the first day of July, two thousand nine: Driver’s Licensing Advisory Board; West Virginia Commission for
National and Community Service; Membership in the Southern Regional Education Board; Bureau of Senior Services; Oil and Gas Inspector’s Examining Board; Division of Protective Services; Motorcycle Safety Awareness Board; Commission on Holocaust Education; Commission for the Deaf and Hard of Hearing; and Rural Health Advisory Panel.

(12) On the first day of July, two thousand ten: Meat Inspection Program of the Department of Agriculture; Motor Vehicle Dealers Advisory Board; Interstate Commission on Uniform State Laws; Center for Professional Development Board; Interstate Commission on the Potomac River Basin; and Bureau for Child Support Enforcement.

(13) On the first day of July, two thousand eleven: Manufactured Housing Construction and Safety Standards Board; State Board of Risk and Insurance Management; and State Rail Authority.

(14) On the first day of July, two thousand twelve: Family Protection Services Board; State Conservation Committee; and Women’s Commission.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, two thousand: State Building Commission.
(2) On the first day of July, two thousand seven: Office of the Environmental Advocate; Racing Commission; Educational Broadcasting Authority; and Oral Health Program.

(3) On the first day of July, two thousand eight: Environmental Quality Board; and Emergency Medical Services Advisory Council.

(4) On the first day of July, two thousand nine: Capitol Building Commission.

(5) On the first day of July, two thousand ten: Veterans’ council; Oil and Gas Conservation Commission; and Unemployment Compensation.

§4-10-5b. Termination of boards created to regulate professions and occupations.

(a) The Legislative Auditor shall evaluate each board created under chapter thirty of this code to regulate professions and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest and whether the public interest requires that the board be continued.

(b) The following boards terminate on the date indicated, but no board terminates under this section unless a regulatory board evaluation has been conducted upon the board:

(1) On the first day of July, two thousand seven: Board of Registration for Sanitarians; Board of Embalmers and Funeral Directors; Board of Optometry; Board of Social Work Examiners; Board of Respiratory Care Practitioners; Board of Veteri-
nary Medicine; and Board of Accountancy; and Board of Examiners of Psychologists.

(2) On the first day of July, two thousand eight: Nursing Home Administrators Board; Board of Hearing Aid Dealers; Board of Pharmacy; Board of Medicine; Board of Barbers and Cosmetologists; and Board of Acupuncture; Board of Licensed Dietitians; Board of Examiners in Counseling; and Board of Dental Examiners.

(3) On the first day of July, two thousand nine: Board of Physical Therapy; Board of Chiropractic Examiners; Board of Landscape Architects; Board of Occupational Therapy; and Real Estate Commission; and Board of Osteopathy.

(4) On the first day of July, two thousand ten: Board of Registration for Professional Engineers; Board of Examiners for Registered Professional Nurses; Board of Examiners for Licensed Practical Nurses; Board of Examiners for Speech Language Pathology and Audiology; Board of Registration for Foresters; and Radiologic Technology Board of Examiners.

(5) On the first day of July, two thousand eleven: West Virginia Board of Professional Surveyors.

(6) On the first day of July, two thousand thirteen: Real Estate Appraiser Licensure and Certification Board.

(7) On the first day of July, two thousand fourteen: Board of Architects.

(8) On the first day of July, two thousand fifteen: Massage Therapy Licensure Board.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5y, relating to requiring the Tax Commissioner to disclose certain tax information to the Consolidated Public Retirement Board to aid in administering retirement plans’ disability retirement benefits; and providing applicability of criminal penalties for unlawful disclosure of information.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5y, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5y. Disclosure of return information to Consolidated Public Retirement Board.

(a) The Tax Commissioner shall, upon written request, disclose to designated employees authorized by the Consolidated Public Retirement Board created by article ten-d, chapter five of this code:

(1) Available return information from the master files of the Tax Division relating to the social security account number,
address, filing status, marital status, amounts, nature and source of income and the number of dependents reported on any return filed by, or with respect to, any individual receiving a disability annuity; and

(2) Available state return information reflected on any state return filed by, or with respect to, any individual described in this subsection relating to the amount of and sources of the individual’s gross income.

(b) The Tax Commissioner shall disclose return information under this section only for purposes of assisting the Consolidated Public Retirement Board in its efforts to ascertain whether individuals receiving disability retirement benefits under any of the retirement systems which it administers continue to be eligible to receive their disability retirement benefits.

(c) The Consolidated Public Retirement Board and its employees shall maintain the confidentiality of information received under this section, except that the information may be disclosed during an administrative process, hearing or appeal, or other action relating to whether an individual receiving disability retirement benefits under any of the retirement systems which the board administers continues to be eligible to receive his or her disability retirement benefits.

(d) The provisions of subsection (c), section five-d of this article are applicable to all employees, officers and agents of the Consolidated Public Retirement Board who disclose information received pursuant to this section that is otherwise confidential under any provision of this code for purposes other than those specified in this section.
AN ACT to amend and reenact §11-1C-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-10-5w of said code; and to amend and reenact §11-13A-3a of said code, all relating to information provided on oil and gas property tax returns; providing limited information relating to oil and gas property that may be disclosed by certain state agencies; and eliminating by the first day of July, two thousand six, the requirement for a combined oil and gas property tax return.

Be it enacted by the Legislature of West Virginia:

That §11-1C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-10-5w of said code be amended and reenacted; and that §11-13A-3a of said code be amended and reenacted, all to read as follows:

Article

1C. Fair and Equitable Property Valuation.

10. Tax Procedure and Administration.

13A. Severance Taxes.

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-14. Confidentiality and disclosure of return information to develop or maintain a mineral mapping or geographic information system; offenses; penalties.
(a) All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative, including property tax returns, maps and geological information and property tax audit information provided to the West Virginia Department of Environmental Protection, Office of Oil and Gas, and the West Virginia Geological and Economic Survey, for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geographic information system is confidential. The information is exempt from disclosure under section four, article one, chapter twenty-nine-b of this code, and shall be kept, held and maintained confidential except to the extent the information is needed by the State Tax Commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit the publication or release of information generated as a part of the minerals mapping or geographic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks or otherwise, presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners: Provided, however, That effective the first day of July, two thousand six, the Tax Commissioner may disclose the following specified information obtained from the West Virginia oil and gas producer/operator return to the West Virginia Geological and Economic Survey and the West Virginia Department of Environmental Protection, Office of Oil and Gas: Provided further, That the West Virginia Geological and Economic Survey and the West Virginia Department of Environmental Protection, Office of Oil and Gas, may disclose the following specified information obtained from the West Virginia oil and gas producer/operator return.
(1) The name and address of the owner of a working interest in the well for which the return is filed;

(2) The county and district within the county wherein the oil or gas well is located and taxed for ad valorem taxation purposes;

(3) The name, address and telephone number of the producer and the producer’s agent;

(4) The American Petroleum Institute number assigned to each well for which the return is filed;

(5) The total barrels produced in the reporting period for each oil well for which the return is filed; and

(6) The total mcf produced in the reporting period for each gas well for which the return is filed.

(b) Any state or county representative or employee, or employee or representative of the West Virginia Geological and Economic Survey or the Department of Environmental Protection, who violates this section by disclosing confidential information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both fined and confined, and shall be assessed the cost of prosecution. As used in this section, the term “state or county representative” includes any current or former state or county employee, officer, commission or board member and any state or county agency, institution, organization, contractor or subcontractor and any principal, officer, agent or employee thereof.

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION.

§11-10-5w. Confidentiality and disclosure of information set forth in the oil and gas combined reporting form
specified in subsection (d), section three-a, article thirteen-a of this chapter to county assessors, the Department of Environmental Protection and to the Public Service Commission; offenses; penalties.

(a) Confidentiality of certain information reported on the oil and gas combined reporting form, exception. — The following information provided by or on behalf of any person or entity on the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter is confidential:

(1) The natural resources account number (NRA);

(2) Total gross revenue for oil or gas or both;

(3) Working interest revenue for oil or gas or both;

(4) The name and address of the owner of a working interest or override royalty interest in the well;

(5) The ownership interest held by the owner of a working interest or override royalty interest in the well, expressed as a percentage or decimal equivalent, of total ownership of each listed owner; and

(6) The income of any owner.

Such information is exempt from disclosure under section four, article one, chapter twenty-nine-b of this code, and shall be kept, held and maintained as confidential except to the extent the information is disclosable under subsections (b) and (c) of this section.

(b) Disclosure to county assessors, Department of Environmental Protection and Public Service Commission authorized. — Notwithstanding the provisions of section five-d, article ten
of this chapter to the contrary, and notwithstanding any other provision of this code to the contrary, the Tax Commissioner may disclose the oil and gas combined reporting form specified in subsection (d), section three-a, article thirteen-a of this chapter, and information set forth thereon to county assessors, the Department of Environmental Protection and the Public Service Commission for the purpose of administering and implementing the assessment, administrative, oversight and regulatory functions and responsibilities with which they are charged by law.

(c) Release and publication of information.

(1) Statistical and aggregate information. — This section shall not be construed to prohibit the publication or release of summary statistical information derived from the oil and gas combined reporting form, including summary statistical information derived from the items specified in subsection (a) of this section. Publication or release of such summary statistical information is authorized in the form of aggregated statistics, maps, articles, reports or professional talks, or in other forms, provided it is presented in accordance with generally accepted practices and in a manner so as to preclude the identification of particular oil and gas combined report filers and to preclude derivation or determination of information specified in subsection (a) of this section about particular oil and gas combined report filers.

(2) Release and publication of certain information. — Notwithstanding the provisions of this section to the contrary and notwithstanding any other provision of this code to the contrary, the Tax Commissioner, county assessors, the Department of Environmental Protection, and the Public Service Commission may publish or publicly release information provided by or on behalf of any person or entity in the oil and gas combined reporting form except for the information specified as confidential in subsection (a) of this section.
(d) **Penalty of unlawful disclosure.** — Any state, county or governmental subdivision employee or representative (including, but not limited to, any county assessor or any employee or representative of the West Virginia Department of Environmental Protection or the West Virginia Public Service Commission), who violates this section by making an unlawful or unauthorized disclosure of confidential information that is reported on the oil and gas combined reporting form is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for not more than one year, or both fined and confined, and shall be assessed the cost of prosecution. As used in this section, the term “state, county or governmental subdivision employee or representative” includes, but is not limited to, any current or former state, county or municipal employee, officer, or commission or board member, and any state, county or municipal agency, institution, organization, contractor or subcontractor and any principal, officer, agent or employee thereof.

(e) Effective the first day of July, two thousand six, this section shall have no force or effect.

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3a. **Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.**

(a) **Imposition of tax.** — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: Provided, That effective for all taxable periods beginning on or after the first day of January, two thousand, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from
any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) **Rate and measure of tax.** — The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(c) **Tax in addition to other taxes.** — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before the first day of July, two thousand three, the Tax Commissioner shall design a common form that may be
used for each of the reports regarding production that are
required to be filed by oil and gas producers, which form shall
readily permit a filing without financial information when such
information is unnecessary. The commissioner shall also design
such forms so as to permit filings in different formats, includ-
ing, but not limited to, electronic formats.

(3) Effective the first day of July, two thousand six, this
subsection shall have no force or effect.

CHAPTER 226

(S. B. 370 — By Senators Helmick, Facemyer, Sharpe, Prezioso,
Plymale, Edgell, Love, Bailey, McCabe, Unger, Minear,
Boley, Yoder, Guills and Sprouse)

[Amended and Again Passed March 18, 2006; in effect January 1, 2007.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia,
1931, as amended, relating to exempting personal property
employed exclusively in agriculture and owned by the producer
from personal property taxation.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.
(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state and used for public purposes;

(4) Property located in this state belonging to any city, town, village, county or any other political subdivision of another state and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private
nonprofit foundation or corporation which receives contribu-
tions exclusively for such college or university, if the property
or dividends, interest, rents or royalties derived therefrom are
used or devoted to educational purposes of such college or
university;

(11) Public and family libraries;

(12) Property used for charitable purposes and not held or
leased out for profit;

(13) Property used for the public purposes of distributing
water or natural gas or providing sewer service by a duly
chartered nonprofit corporation when such property is not held,
leased out or used for profit;

(14) Property used for area economic development
purposes by nonprofit corporations when such property is not
leased out for profit;

(15) All real estate not exceeding one acre in extent, and the
buildings thereon, used exclusively by any college or university
society as a literary hall, or as a dormitory or clubroom, if not
used with a view to profit, including, but not limited to,
property owned by a fraternity or sorority organization
affiliated with a university or college, or property owned by a
nonprofit housing corporation or similar entity on behalf of a
fraternity or sorority organization affiliated with a university or
college, when the property is used as residential accommoda-
tions or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations not
conducted for private profit;

(17) Property belonging to any public institution for the
education of the deaf, dumb or blind or any hospital not held or
leased out for profit;
(18) Houses of refuge and mental health facility or orphanage;

(19) Homes for children or for the aged, friendless or infirm not conducted for private profit;

(20) Fire engines and implements for extinguishing fires, and property used exclusively for the safekeeping thereof, and for the meeting of fire companies;

(21) All property on hand to be used in the subsistence of livestock on hand at the commencement of the assessment year;

(22) Household goods to the value of two hundred dollars, whether or not held or used for profit;

(23) Bank deposits and money;

(24) Household goods, which for purposes of this section means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property, when not held or used for profit;

(25) Personal effects, which for purposes of this section means only articles and items of personal property commonly worn on or about the human body, or carried by a person and normally thought to be associated with the person when not held or used for profit;

(26) Dead victuals laid away for family use;

(27) All property belonging to the state, any county, district, city, village, town or other political subdivision, or any state college or university which is subject to a lease purchase agreement and which provides that, during the term of the lease purchase agreement, title to the leased property rests in the lessee so long as lessee is not in default or shall not have terminated the lease as to the property;
(28) Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to section two, article three, chapter seventeen-a of this code and livestock, employed exclusively in agriculture, as defined in article ten, section one of the West Virginia Constitution: Provided, That this exemption shall only apply in the case of such personal property used on a farm or farming operation that annually produces for sale agricultural products, as defined in rules of the Tax Commissioner; and

(29) Any other property or security exempted by any other provision of law.

(b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt from taxation which has been purchased or procured for the purpose of evading taxation whether temporarily holding the same over the first day of the assessment year or otherwise.

(c) Real property which is exempt from taxation by subsection (a) of this section shall be entered upon the assessor’s books, together with the true and actual value thereof, but no taxes may be levied upon the property or extended upon the assessor’s books.

(d) Notwithstanding any other provisions of this section, this section does not exempt from taxation any property owned by, or held in trust for, educational, literary, scientific, religious or other charitable corporations or organizations, including any public or private nonprofit foundation or corporation existing for the support of any college or university located in West Virginia, unless such property, or the dividends, interest, rents or royalties derived therefrom, is used primarily and immediately for the purposes of the corporations or organizations.

(e) The Tax Commissioner shall, by issuance of rules, provide each assessor with guidelines to ensure uniform
assessment practices statewide to effect the intent of this section.

(f) Inasmuch as there is litigation pending regarding application of this section to property held by fraternities and sororities, amendments to this section enacted in the year one thousand nine hundred ninety-eight shall apply to all cases and controversies pending on the date of such enactment.

(g) The amendment to subdivision (27), subsection (a) of this section, passed during the two thousand five regular session of the Legislature, shall apply to all applicable lease purchase agreements in existence upon the effective date of the amendment.

CHAPTER 227

(H. B. 4037 — By Delegates Michael, Boggs, Cann, Kominar, Williams, Houston, Hall, Border, Ashley and Anderson)

[Passed February 1, 2006; in effect from passage.]
[Approved by the Governor on February 7, 2006.]

AN ACT to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to correcting definitions applicable to the assessment of real property; and making amendments effective retroactively to and including the first day of July, two thousand five, for tax year two thousand six and thereafter.

Be it enacted by the Legislature of West Virginia:

That §11-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§ 11-4-3. Definitions.

(a) For the purpose of giving effect to the “Tax Limitations Amendment,” this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

(1) “Owner” means the person, as defined in section ten, article two, chapter two of this code, who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also considered the owner.

(2) “Used and occupied by the owner thereof exclusively for residential purpose” means actual habitation by the owner or the owner’s spouse of all or a portion of a parcel of real property as a place of abode to the exclusion of any commercial use: Provided, That if the parcel of real property was unoccupied at the time of assessment and either: (A) Was used and occupied by the owner thereof exclusively for residential purposes on the first day of July of the previous year assessment date; (B) was unimproved on the first day of July of the previous year but a building improvement for residential purposes was subsequently constructed thereon between that date and the time of assessment; or (C) is retained by the property owner for noncommercial purposes and was most recently used and occupied by the owner or the owner’s spouse as a residence, and the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident in a nursing home, personal care home, rehabilitation center or
similar facility, then the property shall be considered "used and
occupied by the owner thereof exclusively for residential
purpose": Provided, however, That nothing herein contained
shall permit an unoccupied or unimproved property to be
considered "used and occupied by the owner thereof exclu-
sively for residential purposes" for more than one year unless
the owner, as a result of illness, accident or infirmity, is
residing with a family member or is a resident of a nursing
home, personal care home, rehabilitation center or similar
facility. If a license is required for an activity on the premises
or if an activity is conducted thereon which involves the use of
equipment of a character not commonly employed solely for
domestic as distinguished from commercial purposes, the use
may not be considered to be exclusively residential.

(3) "Family member" means a person who is related by
common ancestry, adoption or marriage including, but not
limited to, persons related by lineal and collateral consanguin-
ity.

(4) "Farm" means a tract or contiguous tracts of land used
for agriculture, horticulture or grazing and includes all real
property designated as "wetlands" by the United States army
corps of engineers or the United States fish and wildlife service.

(5) "Occupied and cultivated" means subjected as a unit to
farm purposes, whether used for habitation or not, and although
parts may be lying fallow, in timber or in wastelands.

(b) Effective date of amendments — Amendments to this
section enacted during the regular session of the Legislature in
the year two thousand six shall have retroactive effect to and
including the first day of July, two thousand five, and shall
apply in determining tax for tax years beginning the first day of
January, two thousand six, and thereafter.
AN ACT to amend and reenact §11-6-26 of the Code of West Virginia, 1931, as amended, relating to increasing the portion of property tax revenues that may be used to reimburse the State Tax Division for its operating costs in carrying out its duties related to the property tax assessment of public utilities.

Be it enacted by the Legislature of West Virginia:

That §11-6-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-26. Operating fund for public utilities division in Auditor’s Office.

1 The Auditor shall establish a special operating fund in the state treasury for the public utilities division in his or her office.
2 The Auditor shall pay into the fund one and three eighths percent of the gross receipts of all moneys collected as provided for in this article. Up to one percent of the gross receipts shall be transferred from the operating fund to the tax loss restoration fund created in section twenty-seven of this article. From the operating fund, the Auditor shall reimburse the tax division for
9 the actual operating expenses incurred in the performance of its
duties required by this article not to exceed fifty percent of the
fund balance after annual transfers to the tax loss restoration
fund. Any moneys remaining in the special operating fund after
annual transfers to the tax loss restoration fund shall be used by
the tax division and the Auditor for funding the operation of
their offices. On the thirty-first day of July in each fiscal year,
if the balance in the operating fund exceeds one percent of
gross revenues plus fifty thousand dollars, the excess shall be
withdrawn from the special fund and deposited in the general
fund of the state.

CHAPTER 229

(S. B. 591 — By Senator Helmick)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §11-10-11 of the Code of West
Virginia, 1931, as amended, relating to authorizing the Tax
Division to collect the cost of federal refund offset fees from the
tax debtor; creating fund; and authorizing expenditure of proceeds
in the fund by the Tax Division in the administration of its office.

Be it enacted by the Legislature of West Virginia:

That §11-10-11 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

(a) General. — The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.

(b) Prerequisite to final settlement of contracts with nonresident contractor; user personally liable. —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter, shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation. — The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the Tax Commissioner to the effect that every tax administered under this article imposed against any
corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) Prerequisite to final settlement of contract with this state or political subdivision; penalty. — All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the contractor have been paid or provided for. If the transaction embodied in the contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then the payment shall also be withheld until receipt of a release from the county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section is subject to a civil penalty of one thousand dollars, recoverable as a debt in a civil action brought by the Tax Commissioner.

(e) Limited effect of Tax Commissioner’s certificates. — The certificates of the Tax Commissioner provided in subsections (b), (c) and (d) of this section shall not bar subsequent investigations, assessments, refunds and credits with respect to the taxpayer.

(f) Payment when person sells out or quits business; liability of successor; lien. —

(1) If any person subject to any tax administered under this article sells out his, her or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and that person shall, within thirty days after selling out his, her or its business or stock of goods
or ceasing to do business, make a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien upon the property of that person.

(2) The successor in business of any person who sells out his, her or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties and interest unpaid after expiration of the thirty-day period allowed for payment: Provided, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) Priority in distribution of estate or property in receivership; personal liability of fiduciary. — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who violates the provisions of this section is personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.
(h) Injunction. — If the taxpayer fails for a period of more
than sixty days to fully comply with any of the provisions of
this article or of any other article of this chapter to which this
article is applicable, the Tax Commissioner may institute a
proceeding to secure an injunction to restrain the taxpayer from
doing business in this state until the taxpayer fully complies
with the provisions of this article or any other articles. No bond
is required of the Tax Commissioner in any action instituted
under this subsection.

(i) Costs. — In any proceeding under this section, upon
judgment or decree for the Tax Commissioner, he or she shall
be awarded his or her costs.

(j) Refunds; credits; right to offset. —

(1) Whenever a taxpayer has a refund or credit due it for an
overpayment of any tax administered under this article, the Tax
Commissioner may reduce the amount of the refund or credit by
the amount of any tax administered under this article, whether
it be the same tax or any other tax, which is owed by the same
taxpayer and collectible as provided in subsection (a) of this
section.

(2) The Tax Commissioner may enter into agreements with
the Internal Revenue Service that provide for offsetting state tax
refunds against federal tax liabilities; offsetting federal tax
refunds against state tax liabilities; and establishing the amount
of the offset fee per transaction which both agencies may
charge each other: Provided, That offsets under subdivision (1)
of this subsection shall occur prior to offset under this subdivi-
sion. At the times moneys are received as a result of an offset
of a taxpayer’s federal tax refund under the provisions of
section 6402(e) of the Internal Revenue Code, the taxpayer is
given credit against state tax liability for the amount of the
offset less a deduction for the offset fee imposed by the Internal
Revenue Service: Provided, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest and penalties owed by the taxpayer to this state: Provided, however, That the amount of the offset fee imposed by the Internal Revenue Service shall be deducted from the moneys received from the taxpayer's federal tax refund and then deposited in the special revolving fund which is hereby created and established in the State Treasury and designated as the Tax Offset Fee Administration Fund: Provided further, That the fees deposited in the Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

(k) Spouse relieved of liability in certain cases. —

(1) In general. — Under regulations prescribed by the Tax Commissioner, if:

(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.
(2) *Grossly erroneous items.* — For purposes of this subsection, the term “grossly erroneous items” means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income; and

(B) Any claim of a deduction, credit or basis by a spouse in an amount for which there is no basis in fact or law.

(3) *Substantial understatement.* — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed five hundred dollars.

(4) Understatement must exceed specified percentage of spouse’s income.

(A) *Adjusted gross income of $20,000 or less.* — If the spouse’s adjusted gross income for the readjustment year is twenty thousand dollars or less, this subsection applies only if the liability described in paragraph (1) of this subsection is greater than ten percent of the adjusted gross income.

(B) *Adjusted gross income of more than twenty thousand dollars.* — If the spouse’s adjusted gross income for the readjustment year is more than twenty thousand dollars, subparagraph (A) of this subdivision is applied by substituting “twenty-five percent” for “ten percent”.

(C) *Readjustment year.* — For purposes of this paragraph, the term “readjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) *Computation of spouse’s adjusted gross income.* — If the spouse is married to another spouse at the close of the readjustment year, the spouse’s adjusted gross income shall
include the income of the new spouse whether or not they file a joint return.

(E) Exception for omissions from gross income. — This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Adjusted gross income. — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.

CHAPTER 230

(H. B. 4580 — By Delegate Michael)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-11b, relating to creation of a fund in the State Treasury; designating the fund as the “special district excise tax administration fund,” and authorizing expenditure of the fund for designated purposes.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-11b, to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.
§11-10-11b. Fund creation; authorization for expenditure.

Amounts deducted and retained by the Tax Commissioner under subsection (e), section eleven-a of this article shall be deposited by the Tax Commissioner in the special revolving fund which is hereby created and established in the State Treasury and designated as the “special district excise tax administration fund.” Amounts deposited in the special district excise tax administration fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

CHAPTER 231

(Com. Sub. for H. B. 4630 — By Delegate Michael)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all relating to creating a voluntary disclosure program; requiring disclosure of certain tax shelters used to avoid paying state income taxes; extending the statute of limitations for issuing assessments related to failures to disclose a listed transaction; and imposing penalties for promoting abusive tax shelters relative to failing to report listed transactions, reportable transaction understatements, failing to participate in the voluntary disclosure program, and for failing to register a tax shelter or maintain required list.
Be it enacted by the Legislature of West Virginia:

That §11-10-15 and §11-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-10E-1, §11-10E-2, §11-10E-3, §11-10E-4, §11-10E-5, §11-10E-6, §11-10E-7, §11-10E-8, §11-10E-9 and §11-10E-10, all to read as follows:

ARTICLE 10. Procedure and Administration.

10E. Tax Shelter Voluntary Compliance Program.

§11-10-15. Limitations on assessment.

(a) General rule. — The amount of any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing): Provided, That in the case of a false or fraudulent return filed with the intent to evade tax, or in case no return was filed, the assessment may be made at any time: Provided, however, That if a taxpayer fails to disclose a listed transaction, as defined in Section 6707A of the Internal Revenue Code, on the taxpayer's state or federal income tax return, an assessment may be made at any time not later than six years after the due date of the return required under article twenty-one or article twenty-four of this chapter for the same taxable year or after such return was filed, or not later than three years after an amended return is filed, whichever is later.

(b) Time return deemed filed. —
(1) Early return. — For purposes of this section, a return filed before the last day prescribed by law, or by rules promulgated by the Tax Commissioner for filing thereof, shall be considered as filed on such last date;

(2) Returns executed by Tax Commissioner. — The execution of a return by the Tax Commissioner pursuant to the authority conferred by section five-c of this article, shall not start the running of the period of limitations on assessment and collection.

(c) Exceptions. — Notwithstanding subsection (a):

(1) Extension by agreement. — The Tax Commissioner and the taxpayer may enter into written agreements to extend the period within which the Tax Commissioner may make an assessment against the taxpayer which period shall not exceed two years. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon;

(2) Deficiency in federal tax. — Notwithstanding subsection (a), in the event of a final determination by the United States Internal Revenue Service or other competent authority of a deficiency in the taxpayer’s federal income tax liability, the period of limitation, upon assessment of a deficiency reflecting such final determinations in the net income tax imposed by article twelve-a and the taxes imposed by articles twenty-one and twenty-four of this chapter, shall not expire until ninety days after the Tax Commissioner is advised of the determination by the taxpayer as provided in section six-a of said article twelve-a, section fifty-nine of said article twenty-one and section twenty of said article twenty-four, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless of the tax year of the deficiency;
(3) Special rule for certain amended returns. — Where, within the sixty-day period ending on the day on which the time prescribed in this section for the assessment of any tax for any taxable year would otherwise expire, the Tax Commissioner receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day sixty days after the day on which the Tax Commissioner receives such document;

(4) Net operating loss or capital loss carrybacks. — In the case of a deficiency attributable the application by the taxpayer of a net operating loss carryback or a capital loss carryback (including that attributable to a mathematical or clerical error in application of the loss carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed;

(5) Certain credit carrybacks. — In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including that attributable to a mathematical or clerical error in application of the credit carryback) such deficiency may be assessed at any time before expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before expiration of the period within which a deficiency for such subsequent taxable year may be assessed. The term “credit carryback” means any carryback allowed under section eight, article one, chapter five-e of this code;
(6) Overpayment of tax credited against payment of another tax. — In the event of a final determination that a taxpayer owes less tax than the amount paid by the taxpayer, and the amount paid was allowed as a credit against a tax administered under this article, the period of limitation upon assessment of a deficiency in the payment of such other tax due to the overstating of the allowable credit, shall not expire until ninety days after the Tax Commissioner receives written notice from the taxpayer advising the Tax Commissioner of the final determination reducing the taxpayer’s liability for a tax allowed as a credit against a tax administered under this article, or until the period of limitations upon assessment provided in subsection (a) has expired, whichever expires the later, and regardless of the tax year of the deficiency.

(d) Cases under bankruptcy code. — The running of limitations provided in subsection (a), on the making of assessments, or provided in section sixteen, on collection, shall, in a case under title eleven of the United States code, be suspended for the period during which the Tax Commissioner is prohibited by reason of such case from making the assessment or from collecting the tax and:

1. For assessment, sixty days thereafter; and
2. For collection, six months thereafter.

§11-10-18. Additions to tax.

(a) Failure to file tax return or pay tax due. —

1. In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return
five percent of the amount of such tax if the failure is for more
than one month, with an additional five percent for each
additional month or fraction thereof during which such failure
continues, not exceeding twenty-five percent in the aggregate:
Provided, That this addition to tax shall be imposed only on the
net amount of tax due;

(2) In the case of failure to pay the amount shown as tax, on
any required return of any tax administered under this article on
or before the date prescribed for payment of such tax (deter-
mined with regard to any extension of time for payment), unless
it is shown that such failure is due to reasonable cause and not
due to willful neglect, there shall be added to the amount shown
as tax on such return one half of one percent of the amount of
such tax if the failure is for not more than one month, with an
additional one half of one percent for each additional month or
fraction thereof during which such failure continues, not
exceeding twenty-five percent in the aggregate: Provided, That
the addition to tax shall be imposed only on the net amount of
tax due;

(3) In the case of failure to pay any amount in respect to
any tax required to be shown on a return specified in paragraph
(1) which is not so shown within fifteen days of the date of
notice and demand therefore, unless it is shown that such failure
is due to reasonable cause and not due to willful neglect, there
shall be added to the amount of tax stated in such notice and
demand one half of one percent of the amount of each tax if the
failure is for not more than one month, with an additional one
half of one percent for each additional month or fraction thereof
during which such failure continues, not exceeding twenty-five
percent in the aggregate: Provided, That this addition to tax
shall be imposed only on the net amount of tax due.

(b) Limitation and special rule. —

(1) Additions under more than one paragraph:
(A) With respect to any return, the amount of the addition under paragraph (1) of subsection (a) shall be reduced by the amount of the addition under paragraph (2) of subsection (a) for any month to which an addition to tax applies under both paragraphs (1) and (2);

(B) With respect to any return, the maximum amount of the addition permitted under paragraph (3) of subsection (a) shall be reduced by the amount of the addition under paragraph (1) of subsection (a) (determined without regard to the last sentence of such subsection) which is attributable to the tax for which the notice and demand is made and which is not paid within fifteen days of notice and demand.

(2) Amount of tax shown more than amount required to be shown. — If the correct amount of tax due is less than the amount shown on the return, paragraphs (1) and (2) of subsection (a) shall only apply to the lower amount.

(3) Exception for estimated tax. — Subsection (a) shall not apply to any failure to pay any estimated tax.

(c) Negligence or intentional disregard of rules and regulations. — If any part of any underpayment of any tax administered under this article is due to negligence or intentional disregard of rules (but without intent to defraud), there shall be added to the amount of tax due five percent of the amount of such tax if the underpayment due to negligence or intentional disregard of rules is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such underpayment continues, not exceeding twenty-five percent in the aggregate: Provided, That these additions to tax shall be imposed only on the net amount of tax due and shall be in lieu of the additions to tax provided in subsection (a), and the Tax Commissioner shall state in his or her notice of assessment the reason or reasons for imposing
this addition to tax with sufficient particularity to put the
taxpayer on notice regarding why it was assessed.

(d) *False or fraudulent return.* — In the case of the filing
of any false or fraudulent return with intent to evade any such
tax, or in the case of willful failure to file a return with intent to
evade tax, there shall be added to the tax due an amount equal
to fifty percent thereof which shall be in lieu of the additions to
tax provided in subsections (a) and (c). The burden of proving
fraud, willfulness or intent to evade tax shall be upon the Tax
Commissioner. In the case of a joint personal income tax return
under article twenty-one of this chapter, this subsection shall
not apply with respect to the tax of the spouse unless some part
of the underpayment is due to the fraud of such spouse.

(e) *Additions to tax treated as tax.* — Additions to tax
prescribed under this section on any tax shall be assessed,
collected and paid in the same manner as taxes.

(f) *Penalties for promoting abusive tax shelters and for
failure to report listed transactions.* —

(1) A penalty is hereby imposed on every person who
engages in activities promoting abusive tax shelters described
in Section 6700(a) of the Internal Revenue Code of 1986, or
any subsequent corresponding provisions of the Internal
Revenue Code, as from time to time amended, and who is
subject to a penalty imposed thereunder, whether or not such
penalty has been imposed, where such activities affect tax
returns required to be filed with the Tax Commissioner. The
amount of the penalty imposed hereunder shall be equal to fifty
percent of the gross income derived from activities by such
person which are subject to that penalty under paragraph (2)(A)
of said section 6700(a) for making a false or fraudulent
statement; and shall be the lesser of one thousand dollars or one
hundred percent of such gross income when the activity is
subject to that penalty under paragraph (1) of said section 6700(a).

(2) For audits of returns commencing on or after the first day of July, two thousand six, when it appears that any part of the deficiency for which an assessment is made is due to failure to disclose a listed transaction or a reportable transaction other than a listed transaction, as the terms are defined in Section 6707A of the Internal Revenue Code of 1986, or any subsequent corresponding provision of the Internal Revenue Code, as from time to time amended, on the taxpayer’s federal income tax return, there shall be imposed a penalty. In the case of a listed transaction the amount of the penalty shall be equal to seventy percent of the amount of the deficiency, and in the case of other reportable transactions the amount of the penalty shall be equal to thirty-five percent of the amount of the deficiency.

(g) Coordination with other penalties. — Unless provided otherwise by rules, the penalties imposed by this section are in addition to any other penalty imposed by this article or article ten-e of this chapter.

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-1. Short title.
§11-10E-2. Tax shelter voluntary compliance program.
§11-10E-4. Use of evidence of participation in the program.
§11-10E-5. Reportable transactions.
§11-10E-6. Failure to register tax shelter or maintain list.
§11-10E-7. Promoting tax shelters.
§11-10E-8. Registration of tax shelters.
§11-10E-10. Suspension of inconsistent code provisions.

§11-10E-1. Short title.

This article may be cited as the “Tax Shelter Voluntary Compliance Act.”
§11-10E-2. Tax shelter voluntary compliance program.

(a) In general. — The Tax Commissioner shall establish and administer a tax shelter voluntary compliance program for eligible taxpayers subject to tax under article twenty-one and article twenty-four of this chapter. The program shall be conducted from the first day of August, two thousand six, through the first day of November, two thousand six, and shall apply to personal income tax and corporation net income tax liabilities attributable to the use of tax avoidance transactions for taxable years beginning before the first day of January, two thousand six.

(b) The department is authorized to adopt rules (including interpretive and emergency rules), issue forms and instructions, issue administrative notices, and take such other actions as it deems necessary to implement the provisions of this article.

(c) Election. — An eligible taxpayer that meets the requirements of subsection (d) of this section with respect to any taxable year to which this article applies may elect to participate in the program under either method below for any particular tax avoidance transaction period. Such election shall be made separately for each taxable year in the form and manner prescribed by the Tax Commissioner, and once made shall be irrevocable.

(1) Voluntary compliance without appeal. — If an eligible taxpayer elects to participate under this paragraph: (i) The Tax Commissioner shall abate and not seek to collect any penalty that may be applicable to the underreporting or underpayment of West Virginia income tax attributable to the use of tax avoidance transactions for such taxable year; (ii) except as otherwise provided in this article, the Tax Commissioner shall not seek civil or criminal prosecution against the taxpayer for such taxable year with respect to tax avoidance transactions; and (iii) the taxpayer may not file a claim for credit or refund
with respect to the tax avoidance transaction for such taxable
year. Nothing in this subsection shall preclude a taxpayer from
filing a claim for credit or refund for the same taxable year in
which a tax avoidance transaction was reported if such credit or
refund is not attributable to the tax avoidance transaction. No
penalty may be waived or abated under this article if the penalty
imposed relates to an amount of West Virginia income tax
assessed prior to the first day of August, two thousand six.

(2) Voluntary compliance with appeal. — If an eligible
taxpayer elects to participate under this paragraph, then: (i) The
Tax Commissioner shall abate and not seek to collect the
penalties for failure to report listed transactions, with respect to
such taxable year; (ii) except as otherwise provided in this
article, the Tax Commissioner shall not seek civil or criminal
prosecution against the taxpayer for such taxable year with
respect to tax avoidance transactions; and (iii) the taxpayer may
file a claim for credit or refund as provided in article ten of this
chapter with respect to such taxable year. Notwithstanding any
other provision of the code to the contrary, the taxpayer may
not file an appeal until after either of the following: (i) The Tax
Commissioner issues a notice of denial; or (ii) the earlier of: (1)
The date which is one hundred eighty days after the date of a
final determination by the Internal Revenue Service with
respect to the transactions at issue; or (2) the date that is three
years after the date the claim for refund was filed or one year
after full payment of all tax, including penalty and interest. No
penalty may be waived or abated under this article if the penalty
imposed relates to an amount of West Virginia income tax
assessed prior to the first day of August, two thousand six.

(d) Eligible taxpayer. — The tax shelter voluntary compli-
ance program applies to any eligible taxpayer who, during the
period from the first day of August, two thousand six, to the
first day of November, two thousand six, does both of the
following: (1) Files an amended return for the taxable year for
which the taxpayer used a tax avoidance transaction to underreport the taxpayer’s West Virginia income tax liability, reporting the total West Virginia taxable income and income tax for such taxable year computed without regard to any tax avoidance transactions; and (2) makes full payment of the additional income tax and interest due for such taxable year that is attributable to the use of the tax avoidance transaction. For purposes of this subsection (d), if the Tax Commissioner subsequently determines that the correct amount of West Virginia income tax was not paid for the taxable year, then the penalty relief under this section shall not apply to any portion of the underpayment not paid to the state that is attributable to a tax avoidance transaction.

An “eligible taxpayer” is an individual, partnership, estate, trust, corporation, limited liability company, joint stock company, or any other company, trustee, receiver, assignee, referee, society, association, business or any other person as described in the tax law, who or which has a tax liability relating to income tax imposed under article twenty-one or article twenty-four of this chapter. However, an otherwise eligible taxpayer would be prohibited from participating in the voluntary compliance initiative if:

(a) The taxpayer is a party to any federal or state criminal investigation for underreporting or underpayment of tax;

(b) As of the taxpayer’s application date under the voluntary compliance initiative, the taxpayer is a party to any pending administrative proceeding or civil or criminal litigation relating to the designated taxes under the voluntary compliance initiative. An administrative proceeding or civil litigation shall be deemed not to be pending on the application date if the taxpayer withdraws from that proceeding or litigation before the Tax Commissioner’s penalty waiver under the voluntary compliance initiative;
(c) The taxpayer has a criminal conviction concerning the tax on which penalty relief is sought; or

(d) The taxpayer was eligible to participate in the amnesty program under article ten-d of this chapter but did not do so, and the taxpayer participated in the voluntary compliance programs of any other state.


For purposes of this article, the term “tax avoidance transaction” means a plan or arrangement devised for the principal purpose of avoiding federal or state income tax or both. Tax avoidance transactions include, but are not limited to, “listed transactions” as defined in Treasury Regulations Section 1.6011-4(b)(2).

§11-10E-4. Use of evidence of participation in the program.

The fact of a taxpayer’s participation in the tax shelter voluntary compliance program shall not be considered evidence that the taxpayer in fact engaged in a tax avoidance transaction.

§11-10E-5. Reportable transactions.

(a) For each taxable year in which a taxpayer is required to make a disclosure statement under Treasury Regulations Section 1.6011-4 (26 CFR 1.6011-4) (including any taxpayer that is a member of a consolidated group required to make such disclosure) with respect to a reportable transaction (including a listed transaction) in which the taxpayer participated in a taxable year for which a return is required, such taxpayer shall file a copy of such disclosure with the Tax Commissioner. Disclosure under this subsection is required to be made by any taxpayer that is a member of a unitary business group that includes any person required to make a disclosure statement under Treasury Regulations Section 1.6011-4. Disclosure under
this subsection is required with respect to any transaction entered into after the twenty-eighth day of February, two thousand, that becomes a listed transaction at any time, and shall be made in the manner prescribed by the Tax Commissioner. With respect to transactions in which the taxpayer participated for taxable years ending before the thirty-first day of December, two thousand four, disclosure shall be made by the due date (including extensions) of the first annual return due after the effective date of this article. With respect to transactions in which the taxpayer participated for taxable years ending on and after the thirty-first day of December, two thousand four, disclosure shall be made in the time and manner prescribed in Treasury Regulations Section 1.6011-4(e). Notwithstanding the above, no disclosure is required for transactions entered into after the twenty-eighth day of February, two thousand, and before the first day of January, two thousand five: (i) If the taxpayer has filed an amended West Virginia income tax return which reverses the tax benefits of the potential tax avoidance transaction; or (ii) as a result of a federal audit the Internal Revenue Service has determined the tax treatment of the transaction and a West Virginia amended return has been filed to reflect the federal treatment.

(b) Reportable transaction understatement penalty. — If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to twenty percent of the amount of that understatement. This penalty shall be deemed assessed upon the assessment of the tax to which such penalty relates and shall be collected and paid on notice and demand in the same manner as the tax.

(1) Reportable transaction understatement. — For purposes of this section, the term “reportable transaction understatement” means the product of: (i) The amount of the increase (if any) in taxable income, as determined by reference to the amount of post-apportioned income that results from a difference between
the proper tax treatment of an item to which this subsection
applies and the taxpayer’s treatment of that item as shown on
the taxpayer’s return, including an amended return filed prior
to the date the taxpayer is first contacted by the Tax Commis-
sioner regarding the examination of the return; and (ii) the
applicable tax rates.

(2) Items to which subsection (b) applies. — This subsec-
tion shall apply to any item which is attributable to either of the
following: (i) any listed transaction as defined in Treasury
Regulations Section 1.6011-4; and (ii) any reportable transac-
tion as defined in Treasury Regulations Section 1.6011-4 (other
than a listed transaction) if a significant purpose of the
transaction is the avoidance or evasion of federal income tax.

(3) Subsection (b) shall be applied by substituting thirty
percent for twenty percent with respect to the portion of any
reportable transaction understatement with respect to which the
requirements of this subsection are not met.

(4) Reasonable cause exception. —

(A) In general. — No penalty shall be imposed under this
subsection with respect to any portion of a reportable transac-
tion understatement if it is shown by clear and convincing
evidence that there was a reasonable cause for such portion and
that the taxpayer acted in good faith with respect to such
portion.

(B) Special rules. — Subparagraph (A) does not apply to
any reportable transaction (including a listed transaction) unless
all of the following requirements are met:

(C) The relevant facts affecting the tax treatment of the
item are adequately disclosed in accordance with this article. A
taxpayer failing to adequately disclose shall be treated as
meeting the requirements of this subparagraph: (i) If the penalty
for that failure was rescinded; (ii) there is or was substantial
authority for such treatment; and (iii) the taxpayer reasonably
believed that such treatment was more likely than not the proper
treatment.

(c) One hundred percent interest penalty for failure to
participate. — If an eligible taxpayer who fails to participate in
the program is contacted by the Internal Revenue Service or the
Tax Commissioner regarding the potential use of a tax avoid-
ance transaction with respect to a taxable year and has a
deficiency with respect to such taxable year or years, there shall
be added to the tax attributable to the potential tax avoidance
transaction an amount equal to one hundred percent of the
interest due under article ten of this chapter for the period
beginning with the statutory due date of the return (determined
without regard to extensions) on which the income should have
been reported to the date of the notice of assessment. Such
penalty shall be deemed assessed upon the assessment of the
interest to which such penalty relates and shall be collected and
paid in the same manner as such interest. The penalty imposed
by this subsection is in addition to any other penalty imposed
by this article or article ten. This subsection shall apply to
taxable years ending on and after the thirty-first day of
December, two thousand five.

(d) Coordination with other penalties. — Unless provided
otherwise by rules, the penalties imposed by this section are in
addition to any other penalty imposed by this article or article
ten of this chapter.

§11-10E-6. Failure to register tax shelter or maintain list.

(a) Penalty imposed. — Any person that fails to comply
with the requirements of section eight or section nine of this
article shall incur a penalty as provided in subsection (b). A
person shall not be in compliance with the requirements of
section eight unless and until the required registration has been
filed and contains all of the information required to be included with such registration under such section eight or Section 6111 of the Internal Revenue Code. A person shall not be in compliance with the requirements of section nine unless, at the time the required list is made available to the Tax Commissioner, such list contains all of the information required to be maintained under such section nine or Section 6112 of the Internal Revenue Code.

(b) Amount of penalty. — The following penalties apply:

(1) In the case of each failure to comply with the requirements of subsection (a), subsection (b) or subsection (d) of section eight, the penalty shall be ten thousand dollars;

(2) If the failure is with respect to a listed transaction under subsection (c) of section eight, the penalty shall be one hundred thousand dollars;

(3) In the case of each failure to comply with the requirements of subsection (a) or subsection (b) of section nine, the penalty shall be ten thousand dollars; and

(4) If the failure is with respect to a listed transaction under subsection (c) of section nine, the penalty shall be one hundred thousand dollars.

(c) Authority to rescind penalty. — The office of tax appeals, with the written approval of the Tax Commissioner, may rescind all or any portion of any penalty imposed by this section with respect to any violation only if one or more of the following apply: (1) It is determined that failure to comply did not jeopardize the best interests of the state and is not due to any willful neglect or any intent not to comply; (2) it is shown that the violation is due to an unintentional mistake of fact; (3) rescinding the penalty would promote compliance with the requirements of this article and effective tax administration; or
(4) the taxpayer can show that there was reasonable cause for
the failure to disclose and that the taxpayer acted in good faith.

(d) Coordination with other penalties. — The penalty
imposed by this section is in addition to any penalty imposed by
this article or article ten of this chapter.

§11-10E-7. Promoting tax shelters.

Except as herein provided, the provisions of Section 6700
of the Internal Revenue Code shall apply for purposes of this
article as if such section applied to a West Virginia deduction,
credit, exclusion from income, allocation or apportionment rule,
or other West Virginia tax benefit. Notwithstanding Section
6700(a) of the Internal Revenue Code, if an activity with
respect to which a penalty imposed under Section 6700(a) of
the Internal Revenue Code, as applied for purposes of this
article, involves a false or fraudulent statement as described in
Section 6700(a)(2)(A) of the Internal Revenue Code, as applied
for purposes of this article, the amount of the penalty imposed
under this section shall be fifty percent of the gross income
derived (or to be derived) from such activity by the person upon
which the penalty is imposed.

§11-10E-8. Registration of tax shelters.

(a) Federal tax shelter. — Any tax shelter organizer
required to register a tax shelter under Section 6111 of the
Internal Revenue Code shall send a duplicate of the federal
registration information to the Tax Commissioner not later than
the day on which registration is required under federal law. Any
person required to register under Section 6111 of the Internal
Revenue Code who receives a tax registration number from the
Secretary of the Treasury shall, within thirty days after request
by the Tax Commissioner, file a statement of that registration
number with the Tax Commissioner.
(b) **Additional requirements for listed transactions.** — In addition to the requirements of subsection (a), for any transactions entered into on or after the twenty-eighth day of February, two thousand, that become listed transactions (as defined under Treasury Regulations Section 1.6011-4) at any time, those transactions shall be registered with the Tax Commissioner (in the form and manner prescribed by the Tax Commissioner) by the later of: (i) Sixty days after entering into the transaction; (ii) sixty days after the transaction becomes a listed transaction; or (iii) the first day of July, two thousand six.

(c) **Tax shelters subject to this section.** — The provisions of this section apply to any tax shelter herein described in which a person:

(1) Organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement; and

(2) Makes or causes another person to make a false or fraudulent statement with respect to securing a tax benefit or a gross valuation as to any material matter, and which is or was one or more of the following: (A) Organized in this state; (B) doing business in this state; or (C) deriving income from sources in this state.

(d) **Tax shelter identification number.** — Any person required to file a return under this article and required to include on the person’s federal income tax return a tax shelter identification number pursuant to Section 6111 of the Internal Revenue Code shall furnish such number when filing the person’s West Virginia return.

§11-10E-9. **Investor lists.**

(a) **Federal abusive tax shelter.** — Any person required to maintain a list under Section 6112 of the Internal Revenue Code and Treasury Regulations Section 301.6112-1 with respect to a
potentially abusive tax shelter shall furnish such list to the Tax Commissioner not later than the time such list is required to be furnished to the Internal Revenue Service under federal income tax law. The list required under this section shall include the same information required with respect to a potentially abusive tax shelter under Treasury Regulations Section 301.6112-1 and any other information that the Tax Commissioner may require.

(b) Additional requirements for listed transactions. — For transactions entered into on or after the twenty-eighth day of February, two thousand, that become listed transactions (as defined under Treasury Regulations Section 1.6011-4) at any time thereafter, the list shall be furnished to the Tax Commissioner by the later of sixty days after entering into the transaction or sixty days after the transaction becomes a listed transaction.

(c) Tax shelters subject to this section. — The provisions of this section apply to any tax shelter herein described in which a person:

(1) Organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement; and

(2) Makes or causes another person to make a false or fraudulent statement with respect to securing a tax benefit or a gross valuation as to any material matter; and which is or was one or more of the following: (A) Organized in this state; (B) doing business in this state; or (C) deriving income from sources in this state.

§11-10E-10. Suspension of inconsistent code provisions.

All provisions of article ten, chapter eleven of this code and all provisions of tax statutes administered under said article ten of this chapter that are inconsistent with the provisions of this
4 article are suspended to the extent necessary to carry out the
5 provisions of this article.

CHAPTER 232

(S. B. 371 — By Senators Helmick, Facemyer, Sharpe,
Prezioso, Plymale, Edgett, Love, Bailey, McCabe, Unger,
Minear, Boley, Yoder, Guills and Sprouse)

[Passed March 8, 2006; in effect from passage.]
[Approved by the Governor on March 22, 2006.]

AN ACT to amend and reenact §11-13A-3b of the Code of West
Virginia, 1931, as amended, relating to reducing the rate of tax
paid on privilege of severing timber after specified date; and
deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §11-13A-3b of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3b. Imposition of tax on privilege of severing timber.

1 (a) Imposition of tax. — For the privilege of engaging or
2 continuing within this state in the business of severing timber
3 for sale, profit or commercial use, there is hereby levied and
4 shall be collected from every person exercising such privilege
5 an annual privilege tax.

6 (b) Rate and measure of tax. — The tax imposed in
7 subsection (a) of this section shall be three and twenty-two
hundredths percent of the gross value of the timber produced,
as shown by the gross proceeds derived from the sale thereof by
the producer, except as otherwise provided in this article:
Provided, That as to timber produced after the thirty-first day
of December, two thousand six, the rate of the tax imposed in
subsection (a) of this section shall be one and twenty-two
hundredths percent of the gross value of the timber produced,
as shown by the gross proceeds derived from the sale thereof by
the producer, except as otherwise provided in this article.

(c) Tax in addition to other taxes. — The tax imposed by
this section shall apply to all persons severing timber in this
state and shall be in addition to all other taxes imposed by law.

CHAPTER 233

(S. B. 581 — By Senator Helmick)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-14C-2 of the Code of West
Virginia, 1931, as amended, relating to the motor fuel excise tax;
and amending the definition of “person” to include responsible
persons.

Be it enacted by the Legislature of West Virginia:

That §11-14C-2 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.
§11-14C-2. Definitions.

As used in this article and unless the context requires otherwise, the following terms have the meaning ascribed herein.

(1) "Agricultural purposes" means the activities of:

(A) Cultivating the soil, including the planting and harvesting of crops, for the commercial production of food, fiber and ornamental woodland products;

(B) Using land for breeding and management of farm livestock, including dairy, apiary, equine or poultry husbandry; and

(C) Using land for the practice of horticulture including the growing of Christmas trees, orchards and nursery stock: Provided, That agricultural purposes shall not include commercial forestry, growing of timber for commercial purposes or any other activity that normally would not be included in subdivision (A), (B) or (C) of this definition.

(2) "Aircraft" includes any airplane or helicopter.

(3) "Alcohol" means motor fuel grade ethanol or a mixture of motor fuel-grade ethanol and methanol, excluding denaturant and water that is a minimum of ninety-eight percent ethanol or methanol by volume.

(4) "Article" or "this article" means article fourteen-c, chapter eleven of this code.

(5) "Assessment" means a written determination by the commissioner of the amount of taxes owed by a taxpayer.

(6) "Aviation fuel" means aviation gasoline or aviation jet fuel.
(7) “Aviation gasoline” means motor fuel designed for use in the operation of aircraft other than jet aircraft, and sold or used for that purpose.

(8) “Aviation jet fuel” means motor fuel designed for use in the operation of jet or turbo-prop aircraft and sold or used for that purpose.

(9) “Biodiesel fuel” means any motor fuel or mixture of motor fuels that is derived, in whole or in part, from agricultural products or animal fats, or the wastes of such products or fats, and is advertised as, offered for sale as, suitable for use or used as motor fuel in an internal combustion engine.

(10) “Blended fuel” means a mixture composed of gasoline or diesel fuel and another liquid, including, but not limited to, gasoline blend stocks, gasohol, ethanol, methanol, fuel grade alcohol, diesel fuel enhancers and resulting blends, other than a de minimus amount of a product such as carburetor detergent or oxidation inhibitor, that can be used as a motor fuel in a highway vehicle.

(11) “Blender” means a person who produces blended motor fuel outside the bulk transfer/terminal system.

(12) “Blending” means the mixing of one or more petroleum products, with or without another product, regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle, an airplane or a marine vessel. Blending does not include mixing that occurs in the process of refining by the original refiner of crude petroleum or the blending of products known as lubricating oil in the production of lubricating oils and greases.

(13) “Bulk plant” means a motor fuel storage and distribution facility that is not a terminal and from which motor fuel may be removed at a rack.
“Bulk transfer” means any transfer of motor fuel from one location to another by pipeline tender or marine delivery within a bulk transfer/terminal system, including, but not limited to, all of the following:

(A) A marine vessel movement of motor fuel from a refinery or terminal to a terminal;

(B) Pipeline movements of motor fuel from a refinery or terminal to a terminal;

(C) Book transfer of motor fuel within a terminal between licensed suppliers prior to completion of removal across the rack; and

(D) Two-party exchange between licensed suppliers or between licensed suppliers and permissive suppliers.

“Bulk user” means a person who maintains storage facilities for motor fuel and uses part or all of the stored motor fuel to operate a motor vehicle, watercraft or aircraft.

“Bulk transfer/terminal system” means the motor fuel distribution system consisting of refineries, pipelines, marine vessels, and terminals. Motor fuel in a refinery, a pipeline, a terminal or a marine vessel transporting motor fuel to a refinery or terminal is in the bulk transfer/terminal system. Motor fuel in a motor fuel storage facility including, but not limited to, a bulk plant that is not part of a refinery or terminal, in the motor fuel supply tank of any engine or motor vehicle, in a marine vessel transporting motor fuel to a motor fuel storage facility that is not in the bulk transfer/terminal system, or in any tank car, rail car, trailer, truck or other equipment suitable for ground transportation is not in the bulk transfer/terminal system.

“Carrier” means any operator of a pipeline or marine vessel engaged in the business of transporting motor fuel above the terminal rack.
(18) "Code" means the Code of West Virginia of one thousand nine hundred thirty-one, as amended.

(19) "Commercial watercraft" means a watercraft employed in the business of commercial fishing, transporting persons or property for compensation or hire or any other trade or business.

(20) "Commissioner" or "tax commissioner" means the West Virginia State Tax Commissioner or his or her delegate.

(21) "Compressed natural gas" means natural gas that has been compressed and dispensed into motor fuel storage containers and is advertised as, offered for sale as, suitable for use as, or used as an engine motor fuel.

(22) "Corporate or partnership officer" means an officer or director of a corporation, partner of a partnership, or member of a limited liability company, who as an officer, director, partner or member is under a duty to perform on behalf of the corporation, partnership, or limited liability company the tax collection, accounting or remitting obligations.

(23) "Dead storage" is the amount of motor fuel that cannot be pumped out of a motor fuel storage tank because the motor fuel is below the mouth of the draw pipe. The amount of motor fuel in dead storage is two hundred gallons for a tank with a capacity of less than ten thousand gallons and four hundred gallons for a tank with a capacity of ten thousand gallons or more.

(24) "Denaturants" means and includes gasoline, natural gasoline, gasoline components or toxic or noxious materials added to motor fuel grade ethanol to make it unsuitable for beverage use, but not unsuitable for automotive use.

(25) "Designated inspection site" means any state highway inspection station, weigh station, agricultural inspection station,
mobile station or other location designated by the commissioner to be used as a motor fuel inspection site.

(26) “Destination state” means the state, territory, or foreign country to which motor fuel is directed for delivery into a storage facility, a receptacle, a container or a type of transportation equipment for the purpose of resale or use. The term shall not include a tribal reservation of any recognized Native American tribe.

(27) “Diesel fuel” means any liquid that is advertised as, offered for sale as, sold for use as, suitable for use as or used as a motor fuel in a diesel-powered highway vehicle or watercraft. The term includes #1 fuel oil, #2 fuel oil, undyed diesel fuel and kerosene, but shall not include gasoline or aviation fuel.

(28) “Distributor” means a person who acquires motor fuel from a licensed supplier, permissive supplier, or from another licensed distributor for subsequent sale or use.

(29) “Diversion” means transporting motor fuel outside a reasonably direct route from the source to the destination state.

(30) “Division” or “State Tax Division” means the Tax Division of the West Virginia Department of Revenue.

(31) “Dyed diesel fuel” means diesel fuel that meets the dyeing and marking requirements of section 4082, Title 26, United States Code, regardless of how the diesel fuel was dyed.

(32) “End seller” means the person who sells motor fuel to the ultimate user of the motor fuel.

(33) “Export” means to obtain motor fuel in West Virginia for sale or other distribution in another state, territory, or foreign country.
“Exporter” means a person that exports motor fuel from this state. The seller is the exporter of motor fuel delivered out-of-state by or for the seller and the purchaser is the exporter of motor fuel delivered out-of-state by or for the purchaser.

“Fuel” means motor fuel.

“Fuel alcohol” means methanol or motor fuel grade ethanol.

“Fuel grade ethanol” means the ASTM standard in effect on the effective date of this article as the D-4806 specification for denatured motor fuel grade ethanol for blending with gasoline.

“Fuel supply tank” means any receptacle on a motor vehicle from which motor fuel is supplied for the propulsion of the motor vehicle.

“Gallon” means a unit of liquid measure as customarily used in the United States containing two hundred thirty-one cubic inches by volume.

“Gasohol” means a blended motor fuel composed of gasoline and motor fuel alcohol.

“Gasoline” means any product commonly or commercially known as gasoline, regardless of classification, that is advertised as, offered for sale as, sold for use as, suitable for use as or used as motor fuel in an internal combustion engine, including gasohol, but does not include special fuel as defined in this section.

“Gasoline blend stocks” includes any petroleum product component of gasoline, such as naphtha, reformate, or toluene, listed in Treas. Reg. §48.4081-1(c) (3) that can be blended for use in a motor fuel. However, the term does not
include any substance that will be ultimately used for consumer
nonmotor fuel use and is sold or removed in drum quantities of
fifty-five gallons or less at the time of the removal or sale.

(43) "Gross gallons" means the total measured product,
exclusive of any temperature or pressure adjustments, consider-
ations or deductions, in U. S. gallons.

(44) "Governmental entity" means this state or any political
subdivision thereof or the United States or its commissioners,
agencies and instrumentalities.

(45) "Heating oil" means any combustible liquid, including,
but not limited to, #1 fuel oil, #2 dyed fuel oil and kerosene,
that is burned in a boiler, furnace, or stove for heating or for
industrial processing purposes.

(46) "Highway" means every way or place of whatever
nature open to the use of the public for purposes of vehicular
travel in this state, including the streets and alleys in towns and
cities.

(47) "Highway vehicle" means any self-propelled vehicle,
trailer or semitrailer that is designed or used for transporting
persons or property over the public highway and includes all
vehicles subject to registration under article three, chapter
seventeen-a of this code.

(48) "Import" means to bring motor fuel into this state by
motor vehicle, marine vessel, pipeline, or any other means.
However, import does not include bringing motor fuel into this
state in the motor fuel supply tank of a motor vehicle, if the
motor fuel is used to power that motor vehicle.

(49) "Importer" means a person that imports motor fuel into
this state. The seller is the importer for motor fuel delivered
into this state from outside of this state by or for the seller and
the purchaser is the importer for motor fuel delivered into this state from outside of this state by or for the purchaser.

(50) "Import verification number" means the number assigned by the commissioner with respect to a single transport vehicle delivery into this state from another state upon request for an assigned number by an importer or the transporter carrying taxable motor fuel into this state for the account of an importer.

(51) "In this state" means the area within the borders of West Virginia, including all territory within the borders of West Virginia that is owned by the United States of America.

(52) "Invoiced gallons" means the gallons actually billed on an invoice for payment.

(53) "Licensee" means any person licensed by the commissioner pursuant to section ten of this article.

(54) "Liquid" means any substance that is liquid above its freezing point.

(55) "Liquefied natural gas" means natural gas that has been liquefied at -126.1 degrees centigrade and stored in insulated cryogenic tanks for use as an engine motor fuel.

(56) "Motor carrier" means any vehicle used, designated or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or having three or more axles regardless of weight or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or registered gross vehicle weight, and any aircraft, barge or other watercraft or railroad locomotive transporting passengers or freight in or through this state: Provided, That the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand
The term motor carrier does not include any type of recreational vehicle.

(57) “Motor fuel” means gasoline, blended fuel, aviation fuel and any special fuel.

(58) “Motor fuel transporter” means a person who transports motor fuel outside the bulk transfer/terminal system by means of a transport vehicle, a railroad tank car, or a marine vessel.

(59) “Motor vehicle” means automobiles, motor carriers, motor trucks, motorcycles and all other vehicles or equipment, engines or machines which are operated or propelled by combustion of motor fuel.

(60) “Net gallons” means the amount of motor fuel measured in gallons when adjusted to a temperature of sixty degrees fahrenheit and a pressure of fourteen and seven-tenths pounds pressure per square inch.

(61) “Permissive supplier” is a person who may not be subject to the taxing jurisdiction of this state, but who meets both of the following requirements: (A) Is registered under section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal system; and (B) a position holder in motor fuel only located in another state or a person who receives motor fuel only in another state pursuant to a two-party exchange: Provided, That a person is classified as a supplier if it has or maintains, occupies or uses, within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent (by whatever name called) operating within this state under the authority of the supplier or its subsidiary.

(62) “Person” means any individual; firm; cooperative; association; corporation; limited liability corporation; estate;
guardian; executor; administrator; trust; business trust; syndicate; partnership; limited partnership; copartnership; organization; limited liability partnership; joint venture; receiver; trustee in bankruptcy; club, society or other group or combination acting as a unit; or public body, including, but not limited to, this state, any other state, and any agency, commissioner, institution, political subdivision or instrumentality of this state or any other state; and also any officer, employee or member of any of the foregoing who, as an officer, employee or member, is under a duty to perform or is responsible for the performance of an act prescribed by the provisions of this article.

(63) “Position holder” means the person who holds the inventory position in motor fuel in a terminal, as reflected on the records of the terminal operator. A person holds the inventory position in motor fuel when that person has a contract with the terminal operator for the use of storage facilities and terminaling services for motor fuel at the terminal. The term includes a terminal operator who owns motor fuel in the terminal.

(64) “Principal” means:

(A) If a partnership, all its partners;

(B) If a corporation, all its officers, directors, and controlling direct or indirect owners;

(C) If a limited liability company, all its members; or

(D) An individual.

(65) “Rack” means a mechanism for delivering motor fuel from a refinery, terminal, marine vessel or bulk plant into a transport vehicle, railroad tank car or other means of transfer that is outside the bulk transfer/terminal system.
(66) “Railroad locomotive” means any diesel-powered equipment or machinery that rides on railroad rails and includes a switching engine.

(67) “Receive” means any acquisition of ownership or possession of motor fuel.

(68) “Refiner” means any person who owns, operates or otherwise controls a refinery.

(69) “Refinery” means a facility for the manufacture or reprocessing of finished or unfinished petroleum products usable as motor fuel and from which motor fuel may be removed by pipeline or marine vessel or at a rack.

(70) “Removal” means a physical transfer other than by evaporation, loss, or destruction. A physical transfer to a transport vehicle or other means of conveyance outside the bulk transfer/terminal system is complete upon delivery into the means of conveyance.

(71) “Retailer” means a person who sells motor fuel at retail or dispenses motor fuel at a retail location.

(72) “Special fuel” means any gas or liquid, other than gasoline, used or suitable for use as motor fuel in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance and includes products commonly known as natural or casing-head gasoline, diesel fuel, dyed diesel fuel, biodiesel fuel, transmix and all forms of motor fuel commonly or commercially known or sold as butane, propane, liquefied natural gas, liquefied petroleum gas, compressed natural gas product or a combination of liquefied petroleum gas and a compressed natural gas product. “Special fuel” does not include any petroleum product or chemical compound such as alcohol, industrial solvent, heavy furnace oil or lubricant, unless blended in or sold for use as motor fuel in an internal combustion engine.
“State” or “this state” means the State of West Virginia.

“Supplier” means a person that is:

(A) Subject to the general taxing jurisdiction of this state;

(B) Registered under Section 4101 of the Internal Revenue Code for transactions in motor fuel in the bulk transfer/terminal distribution system; and

(C) One of the following:

(i) A position holder in motor fuel in a terminal or refinery in this state and may concurrently also be a position holder in motor fuel in another state; or

(ii) A person who receives motor fuel in this state pursuant to a two-party exchange.

A terminal operator shall not be considered a supplier based solely on the fact that the terminal operator handles motor fuel consigned to it within a terminal.

“Tax” or “this tax” is the motor fuel excise tax imposed by this article and includes within its meaning interest, additions to tax and penalties, unless the context requires a more limited meaning.

“Taxpayer” means any person required to file a return for the tax imposed by this article or any person liable for payment of the tax imposed by this article.

“Terminal” means a motor fuel storage and distribution facility to which a terminal control number has been assigned by the Internal Revenue Service, to which motor fuel is supplied by pipeline or marine vessel, and from which motor fuel may be removed at a rack.
(78) “Terminal operator” means a person who owns, operates or otherwise controls a terminal.

(79) “Transmix” means: (A) The buffer or interface between two different products in a pipeline shipment; or (B) a mix of two different products within a refinery or terminal that results in an off-grade mixture.

(80) “Transport vehicle” means a vehicle designed or used to carry motor fuel over the highway and includes a straight truck, a straight truck/trailer combination and a semitrailer combination rig.

(81) “Trustee” means a person who is licensed as a supplier or a permissive supplier and receives tax payments from and on behalf of another pursuant to section twenty-four of this article.

(82) “Two-party exchange” means a transaction in which motor fuel is transferred from one licensed supplier or permissive supplier to another licensed supplier or permissive supplier pursuant to an exchange agreement; and

(A) Includes a transfer from the person who holds the inventory position in taxable motor fuel in the terminal as reflected on the records of the terminal operator;

(B) Is completed prior to removal of the product from the terminal by the receiving exchange partner; and

(C) Is recorded on the terminal operator’s books and records with the receiving exchange partner as the supplier that removes the motor fuel across the terminal rack for purposes of reporting the transaction to this state.

(83) “Use” means the actual consumption or receipt of motor fuel by any person into a motor vehicle, aircraft or watercraft.

(84) “Watercraft” means any vehicle used on waterways.
Be it enacted by the Legislature of West Virginia:

That §11-15-9d and §11-15-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15A-3d of said code be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-13, §11-15B-14a, §11-15B-15, §11-15B-18, §11-15B-19, §11-15B-20, §11-15B-23, §11-15B-24, §11-15B-35 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §11-15B-2b and §11-15B-37, all to read as follows:
ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9d. Direct pay permits.

§11-15-9d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the Tax Commissioner may, pursuant to rules promulgated by him or her in accordance with article three, chapter twenty-nine-a of this code, authorize a person who is a user, consumer, distributor or lessee to which sales or leases of tangible personal property are made or services provided, to pay any tax levied by this article or article fifteen-a of this chapter directly to the Tax Commissioner and waive the collection of the tax by that person’s vendor. No authority shall be granted or exercised except upon application to the Tax Commissioner and after issuance by the Tax Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section is valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of a direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen-a of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors of the personal property or services shall be made directly to the Tax Commissioner by the permit holder.

(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner
a consumers sales and use tax direct pay permit return for the
preceding month in the form prescribed by the Tax Commis-
sioner showing the total value of the tangible personal property
used, the amount of taxable services purchased, the amount of
consumers sales and use taxes due from the permit holder,
which shall be paid to the Tax Commissioner with the return,
and any other information as the Tax Commissioner considers
necessary: Provided, That if the amount of consumers sales and
use taxes due averages less than two hundred fifty dollars per
month, the Tax Commissioner may permit the filing of
quarterly returns in lieu of monthly returns and the amount of
tax shown on the returns to be due shall be remitted on or
before the fifteenth day following the close of the calendar
quarter; and if the amount due averages less than one hundred
fifty dollars per calendar quarter, the Tax Commissioner may
permit the filing of an annual direct pay permit return and the
amount of tax shown on the return to be due shall be remitted
on or before thirty days after the end of the permit holder tax
year for federal and state income tax purposes: Provided, however, That the Tax Commissioner may, by nonemergency
legislative rules promulgated pursuant to article three, chapter
twenty-nine-a of this code, change the minimum amounts
established in this subsection. The Tax Commissioner, upon
written request by the permit holder, may grant a reasonable
extension of time, upon terms as the Tax Commissioner may
require, for the making and filing of direct pay permit returns
and paying the tax due. Interest on the tax shall be chargeable
on every extended payment at the rate specified in section
seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is valid until
expiration of the taxpayers registration year under article twelve
of this chapter. This permit is automatically renewed when the
taxpayer’s business registration certificate is issued for the next
succeeding fiscal year, unless the permit is surrendered by the
holder or canceled for cause by the Tax Commissioner.
(d) Persons who hold a direct payment permit which has not
been canceled are not required to pay the tax to the vendor as
otherwise provided in this article or article fifteen-a of this
chapter. They shall notify each vendor from whom tangible
personal property is purchased or leased or from whom services
are purchased of their direct payment permit number and that
the tax is being paid directly to the Tax Commissioner. Upon
receipt of the notice, the vendor is absolved from all duties and
liabilities imposed by this chapter for the collection and
remittance of the tax with respect to sales of tangible personal
property and sales of services to the permit holder. Vendors
who make sales upon which the tax is not collected by reason
of the provisions of this section shall maintain records in a
manner that the amount involved and identity of each purchaser
may be ascertained.

(e) Upon the expiration, cancellation or surrender of a
direct payment permit, the provisions of this chapter, without
regard to this section, will thereafter apply to the person who
previously held the permit, and that person shall promptly
notify in writing vendors from whom tangible personal property
or services are purchased or leased of the cancellation or
surrender. Upon receipt of the notice, the vendor is subject to
the provisions of this chapter, without regard to this section,
with respect to all sales, distributions, leases or storage of
tangible personal property, thereafter made to or for that person.

(f) The amendments to this section enacted in the year two
thousand six are effective for tax years beginning on or after the
first day of January, two thousand six.


(a) When the total consumers sales and use tax remittance
for which a person is liable does not exceed an average monthly
amount over the taxable year of two hundred fifty dollars, he or
she may pay the tax and make a quarterly return on or before
the twentieth day of the first month in the next succeeding
quarter in lieu of monthly returns: Provided, That the Tax
Commissioner may, by nonemergency legislative rules
promulgated pursuant to article three, chapter twenty-nine-a of
this code, change the minimum amount established in this
subsection.

(b) When the total consumers sales and use tax remittance
for which a person is liable does not in the aggregate exceed six
hundred dollars for the taxable year, he or she may pay the tax
and make an annual return on or before thirty days after the end
of his or her taxable year for federal and state income tax
purposes: Provided, That the Tax Commissioner may, by
nonemergency legislative rules promulgated pursuant to article
three, chapter twenty-nine-a of this code, change the minimum
amount established in this subsection.

(c) The amendments to this section enacted in the year two
thousand six are effective for tax years beginning on or after the
first day of January, two thousand six.

ARTICLE 15A. USE TAX.

§11-15A-3d. Direct pay permits.

(a) Notwithstanding any other provision of this article, the
Tax Commissioner may, pursuant to rules promulgated by him
or her in accordance with article three, chapter twenty-nine-a of
this code, authorize a person as defined in section two of article
fifteen who is a user, consumer, distributor or lessee to which
sales or leases of tangible personal property are made or
services provided to pay any tax levied by this article or article
fifteen of this chapter directly to the Tax Commissioner and
waive the collection of the tax by that person’s vendor. This
authority is not to be granted or exercised except upon applica-
tion to the Tax Commissioner and after issuance by the Tax
Commissioner of a direct pay permit. Each direct pay permit granted pursuant to this section continues to be valid until surrendered by the holder or canceled for cause by the commissioner. The commissioner shall prescribe by rules promulgated in accordance with article three, chapter twenty-nine-a of this code those activities which will cause cancellation of a direct pay permit issued pursuant to this section. Upon issuance of the direct pay permit, payment of the tax imposed or assertion of the exemptions allowed by this article or article fifteen of this chapter on sales and leases of tangible personal property and sales of taxable services from the vendors thereof shall be made directly to the Tax Commissioner by the permit holder.

(b) On or before the twentieth day of each month, every permit holder shall make and file with the Tax Commissioner a consumers sales and use tax direct pay permit return for the preceding month in the form prescribed by the Tax Commissioner showing the total value of the tangible personal property so used, the amount of taxable services purchased, the amount of tax due from the permit holder, which amount shall be paid to the Tax Commissioner with the return, and any other information the Tax Commissioner considers necessary: Provided, That if the amount of consumers sales and use taxes due averages less than two hundred fifty dollars per month, the Tax Commissioner may permit the filing of quarterly returns in lieu of monthly returns and the amount of tax shown thereon to be due shall be remitted on or before the twentieth day following the close of the calendar quarter; and if the amount due averages less than one hundred fifty dollars per calendar quarter, the Tax Commissioner may permit the filing of an annual direct pay permit return and the amount of tax shown to be due is to be remitted on or before the thirtieth day after the close of permit holder’s taxable year: Provided, however, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established in this
subsection. The Tax Commissioner, upon written request filed
by the permit holder before the due date of the return, may
grant a reasonable extension of time, upon the terms the Tax
Commissioner may require, for the making and filing of direct
pay permit returns and paying the tax due. Interest on the tax is
chargeable on every extended payment at the rate specified in
section seventeen, article ten of this chapter.

(c) A permit issued pursuant to this section is to be valid
until expiration of the taxpayer's registration year under article
twelve of this chapter. This permit is automatically renewed
when the taxpayer's business registration certificate is issued
for the next succeeding fiscal year, unless the permit is
surrendered by the holder or canceled for cause by the Tax
Commissioner.

(d) Persons who hold a direct payment permit which has not
been canceled are not required to pay the tax to the vendor as
otherwise provided in this article or article fifteen of this
chapter. These persons shall notify each vendor from whom
tangible personal property is purchased or leased or from whom
services are purchased of their direct payment permit number
and that the tax is being paid directly to the Tax Commissioner.
Upon receipt of the notice, the vendor is absolved from all
duties and liabilities imposed by this chapter for the collection
and remittance of the tax with respect to sales, distributions,
leases or storage of tangible personal property and sales of
services to the permit holder. Vendors who make sales upon
which the tax is not collected by reason of the provisions of this
section shall maintain records in a manner by which the amount
involved and identity of each purchaser may be ascertained.

(e) Upon the expiration, cancellation or surrender of a
direct payment permit, the provisions of this chapter, without
regard to this section, shall thereafter apply to the person who
previously held the permit, and the person shall promptly notify
in writing vendors from whom tangible personal property or
services are purchased of the cancellation or surrender. Upon
receipt of the notice, the vendor is subject to the provisions of
this chapter, without regard to this section, with respect to all
sales of tangible personal property or taxable services, thereaf-
fter made to or for the person.

(f) The amendments to this section enacted in the year two
thousand six are effective for tax years beginning on or after the
first day of January, two thousand six.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION
ACT.

§11-15B-2b. Telecommunications definitions.
§11-15B-14a. Application of general sourcing rules and exclusion from the rules.
§11-15B-18. Multiple points of use of certain products and services.
§11-15B-20. Telecommunication sourcing definitions.
§11-15B-23. Enactment of exemptions.
§11-15B-35. Local rate and boundary changes.
§11-15B-36. Relief from certain liability for state and local taxes.
§11-15B-37. State review and approval of certified automated system software and
certain liability relief.


(a) General. — When used in this article and articles fifteen
and fifteen-a of this chapter, words defined in subsection (b) of
this section shall have the meanings ascribed to them in this
section, except in those instances where a different meaning is
distinctly expressed or the context in which the term is used
clearly indicates that a different meaning is intended by the
Legislature.
8  (b) Terms defined. —

9  (1) “Agent” means a person appointed by a seller to represent the seller before the member states.

10  (2) “Agreement” means the Streamlined Sales and Use Tax Agreement as defined in section two-a of this article.

11  (3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

16  (4) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

24  (A) “Distinct and identifiable products” does not include:

25  (i) Packaging—such as containers, boxes, sacks, bags and bottles—or other materials—such as wrapping, labels, tags and instruction guides—that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

32  (ii) A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge”; or
(iii) Items included in the member state's definition of “sales price”, as defined in this section.

(B) The term “one nonitemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card or price list.

(C) A transaction that otherwise meets the definition of a “bundled transaction”, as defined in this subdivision, is not a “bundled transaction” if it is:

(i) The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(ii) The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(iii) A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis.

(I) “De minimis” means the seller’s “purchase price” or “sales price” of the taxable products is ten percent or less of the total “purchase price” or “sales price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the taxable
(III) Sellers shall use the full term of a service contract to
determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the
general rate of tax and food or food ingredients taxable at a
lower rate of tax and the “purchase price” or “sales price” of the
products taxable at the general sales tax rate is de minimis.

(I) “De minimis” means the seller’s “purchase price” or
“sales price” of the products taxable at the general sales tax rate
is ten percent or less of the total “purchase price” or “sales
price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the
“sales price” of the products to determine if the products
taxable at the general rate of tax are de minimis. Sellers may
not use a combination of the “purchase price” and “sales price”
of the products to determine if the products taxable at the
general rate of tax are de minimis.

(III) Sellers shall use the full term of a service contract to
determine if the products taxable at the general rate of tax are
de minimis; or

(v) The “retail sale” of exempt tangible personal property,
or food and food ingredients taxable at a lower rate of tax, and
tangible personal property taxable at the general rate of tax
where:

(I) The transaction includes “food and food ingredients”,
“drugs”, “durable medical equipment”, “mobility-enhancing
equipment”, “prosthetic devices” all as defined in this article ;
and
(II) Where the seller's "purchase price" or "sales price" of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total "purchase price" or "sales price" of the bundled tangible personal property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible personal property when making the fifty percent determination for a transaction.

(5) "Candy" means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

(6) "Certified automated system" or "CAS" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state and maintain a record of the transaction.

(7) "Certified service provider" or "CSP" means an agent certified under the agreement to perform all of the seller's sales tax functions.

(8) "Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(9) "Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

(10) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(11) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a
(12) "Dietary supplement" means any product, other than "tobacco", intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v), inclusive, of this paragraph;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label as required pursuant to 21 CFR §101.36, or in any successor section of the Code of Federal Regulations.

(13) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the
purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

(14) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.

(15) “Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility-enhancing equipment”, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.
(16) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(17) “Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service. An exemption that is available to all individuals shall not be considered an entity-based exemption.

(18) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, prepared food or tobacco.

(19) “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment.

(20) “Governing board” means the governing board of the Streamlined Sales and Use Tax Agreement.

(21) “Includes” and “including” when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(22) “Lease” includes rental, hire and license. “Lease” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code or other provisions of federal, state or local law.

(23) “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(24) “Mobility-enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
(25) “Model I seller” means a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

(26) “Model II seller” means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(27) “Model III seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(28) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(29) “Personal service” includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(30) (A) “Prepared food” means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins or straws. A plate does not include a container or packaging used to transport the food.

(B) “Prepared food” in subparagraph (ii), paragraph (A) of this subdivision does not include food that is only cut, repackaged or pasteurized by the seller, and eggs, fish, meat, poultry and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code of 2001 so as to prevent food-borne illnesses.

(C) Additionally, “prepared food”, as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in Sector 311, except Subsection 3118 (bakeries);

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(31) “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(32) “Prewritten computer software” means “computer software”, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.
(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

(C) “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(33) “Product-based exemption” means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(34) “Prosthetic device” means a replacement, corrective or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.
(35) “Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(36) “Purchase price” means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.

(37) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(38) “Registered under this agreement” means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(39) “Retail sale” or “sale at retail” means:

(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(40) (A) “Sales price” means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;
(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges; and

(v) Installation charges.

(B) “Sales price” does not include:

(i) Discounts, including cash, term or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; or

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(C) “Sales price” shall include consideration received by the seller from third parties if:

(i) The seller actually receives consideration from a party other than the purchaser and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the following criteria is met:
(I) The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

(II) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

(III) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

(41) “Sales tax” means the tax levied under article fifteen of this chapter.

(42) “Seller” means any person making sales, leases or rentals of personal property or services.

(43) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this state. The term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a
manufacturer’s, distributor’s or other third-party’s marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a “service” or “selected service” rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(44) “Soft drink” means nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes or greater than fifty percent of vegetable or fruit juice by volume.

(45) “State” means any state of the United States and the District of Columbia.

(46) “Tangible personal property” means personal property that can be seen, weighed, measured, felt or touched, or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(47) “Tax” includes all taxes levied under articles fifteen and fifteen-a of this chapter and additions to tax, interest and penalties levied under article ten of this chapter.

(48) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.
(49) “Taxpayer” means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax penalties imposed by article ten of this chapter.

(50) “Telecommunications service” when used in this article and articles fifteen and fifteen-a shall have the same meaning as that term is defined in section two-b of this article.

(51) “Tobacco” means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(52) “Use tax” means the tax levied under article fifteen-a of this chapter.

(53) “Use-based exemption” means an exemption based on a specific use of the product or service by the purchaser.

(54) “Vendor” means any person furnishing services taxed by article fifteen or fifteen-a of this chapter or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article and in articles fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.


As used in this article and articles fifteen and fifteen-a of this chapter, the term “Streamlined Sales and Use Tax Agreement” or “agreement” means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that
provided in section four of this article, except when the context
in which the term is used clearly indicates that a different
meaning is intended by the Legislature. “Agreement” includes
amendments to the agreement adopted by the implementing
states in calendar years two thousand three, two thousand four,
two thousand five and amendments adopted by the governing
board on or before the thirty-first day of January, two thousand
six, but does not include any substantive changes in the
agreement adopted after the thirty-first day of January, two
thousand six.

§11-15B-2b. Telecommunications definitions.

(a) General. — When used in this article and articles
fifteen and fifteen-a of this chapter, words defined in subsection
(b) of this section shall have the meanings ascribed to them in
this section, except in those instances where a different meaning
is distinctly expressed or the context in which the term is used
clearly indicates that a different meaning is intended by the
Legislature.

(b) Terms defined. —

(1) “Telecommunications service” means the electronic
transmission, conveyance or routing of voice, data, audio, video
or any other information or signals to a point, or between or
among points.

(A) The term “telecommunications service” includes such
transmission, conveyance or routing in which computer
processing applications are used to act on the form, code or
protocol of the content for purposes of transmission, convey-
ance or routing without regard to whether the service is referred
to as voice over internet protocol services or is classified by the
Federal Communications Commission as enhanced or value
added.
(B) "Telecommunications service" does not include:

(i) Advertising, including, but not limited to, directory advertising;

(ii) "Ancillary services";

(iii) Billing and collection services provided to third parties;

(iv) Data processing and information services that allow data to be generated, acquired, stored, processed or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;

(v) Digital products “delivered electronically”, including, but not limited to, software, music, video, reading materials or ring tones;

(vi) Installation or maintenance of wiring or equipment on a customer’s premises;

(vii) Internet access service;

(viii) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of services by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service as defined in 47 U. S. C. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3; or

(ix) Tangible personal property.

(2) Related or ancillary terms. — The following terms are either used in subsection (a) of this section or are commonly associated with terms used in that subsection.
(A) “800 service” means a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877” and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.

(B) “900 service” means an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for collection services provided by the seller of the “telecommunications services” to the subscriber or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.

(C) “Ancillary services” means services that are associated with or incidental to the provision of “telecommunications services”, including, but not limited to, “detailed telecommunications billing”, “directory assistance”, “vertical service” and “voice mail services”.

(D) “Coin-operated telephone service” means a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.

(E) “Conference-bridging service” means an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference-bridging service” does not include the “telecommunications services” used to reach the conference bridge.
(F) "Detailed telecommunications billing service" means an "ancillary service" of separately stating information pertaining to individual calls on a customer’s billing statement.

(G) "Directory assistance" means an "ancillary service" of providing telephone number information and/or address information.

(H) "Fixed wireless service" means a "telecommunications service" that provides radio communication between fixed points.

(I) "International" means a "telecommunications service" that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a United States territory or possession.

(J) "Interstate" means a "telecommunications service" that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.

(K) "Intrastate" means a "telecommunications service" that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.

(L) "Mobile wireless service" means a "telecommunications service" that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, "telecommunications services" that are provided by a commercial mobile radio service provider.

(M) "Paging service" means a "telecommunications service" that provides transmission of coded radio signals for
the purpose of activating specific pagers and may include messages and/or sounds.

(N) “Pay telephone service” means a “telecommunications service” provided through any pay telephone.

(O) “Prepaid calling service” means the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(P) “Prepaid wireless calling service” means a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other nontelecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(Q) “Private communications service” means a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(R) “Residential telecommunications service” means a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered
142 residential if it is provided to and paid for by an individual
143 resident rather than the institution.

144 (S) “Value-added nonvoice data service” means a service
145 that otherwise meets the definition of “telecommunications
146 services” in which computer processing applications are used
147 to act on the form, content, code or protocol of the information
148 or data primarily for a purpose other than transmission,
149 conveyance or routing.

150 (T) “Vertical service” means an “ancillary service” that is
151 offered in connection with one or more “telecommunications
152 services”, which offers advanced calling features that allow
153 customers to identify callers and to manage multiple calls and
154 call connections, including “conference-bridging services”.

155 (U) “Voice mail service” means an “ancillary service” that
156 enables the customer to store, send or receive recorded
157 messages. “Voice mail service” does not include any “vertical
158 services” that the customer may be required to have in order to
159 utilize the “voice mail service”.

160 (c) Effective date. — This section enacted in the year two
161 thousand six shall apply to purchases made on or after the first
162 day of July, two thousand six.


1 (a) Subject to the limitations in this section:

2 (1) The Tax Commissioner shall provide amnesty for
3 uncollected or unpaid sales or use tax to a seller who registers
4 to pay or to collect and remit applicable sales or use tax on sales
5 made to purchasers in this state in accordance with the terms of
6 the streamlined sales and use tax agreement: Provided, That the
7 seller was not registered in this state in the twelve-month period
8 preceding the first day of October, two thousand five, the
effective date of this state’s participation in the Streamlined Sales and Use Tax Agreement.

(2) The amnesty precludes assessment for uncollected or unpaid sales or use tax together with additions to tax, penalty or interest for sales made during the period the seller was not registered in this state: Provided, That registration under the agreement occurs within twelve months after the date on which the governing board determines that an adequate number of certified service providers have been certified by the governing board to collect taxes under the agreement.

(b) Exceptions. — The amnesty is not available:

(1) To a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes; or

(2) For sales or use taxes already paid or remitted to the state or to taxes collected by the seller for this state.

(c) Period of amnesty. — The amnesty is fully effective, absent the seller’s fraud or intentional misrepresentation of a material fact, as long as the seller continues registration under the agreement and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability during this 36-month period is tolled.

(d) Effect of amnesty. — The amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

§11-15B-14a. Application of general sourcing rules and exclusion from the rules.
(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, custom software or a service. The provisions of said section only apply to determine a seller’s obligation to pay or collect and remit a sales or use tax with respect to the seller’s sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(b) Section fifteen of this article does not apply to sales or use tax levied on telecommunication services as defined in section two-b of this article. Telecommunication services shall be sourced in accordance with section nineteen of this article.


(a) General rule. — For purposes of articles fifteen and fifteen-a of this chapter, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.
(4) When subdivisions (1), (2) and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, provided use of this address does not constitute bad faith.

(5) When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided: Provided, that any location that merely provided the digital transfer of the product sold is disregarded for these purposes.

(b) Lease or rental. — The lease or rental of tangible personal property or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.
(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) Vehicles. — The lease or rental of motor vehicles, trailers, semitrailers or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. — The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance
with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. “Transportation equipment” means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers or passenger buses that are:

   (A) Registered through the international registration plan; and

   (B) Operated under authority of a carrier authorized and certificated by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

(3) Aircraft that are operated by air carriers authorized and certificated by the United States Department of Transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions. — Subsections (a) and (b) of this section shall not apply to the following goods or services:

(1) Telecommunications services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

(2) Until the first day of January, two thousand eight, a seller who is primarily engaged in the retail sale of cut flowers
and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, "primarily" means more than fifty percent of the seller's total gross sales or receipts are derived from that activity. In determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After the thirty-first day of December, two thousand seven, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined. — As used in subsection (a) of this section, "product" includes tangible personal property, custom software or a service, or any combination thereof.

§11-15B-18. Multiple points of use of certain products and services.

(a) General. — Notwithstanding the provisions of section fifteen of this article, a business purchaser that is not a holder of a direct pay permit that knows at the time of the business purchase of a digital good, computer software or service that the digital good, computer software or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with the purchase an exemption certificate claiming "multiple points of use" or meet the requirements of subsection (b) or (c) of this section.

(1) Upon receipt of an exemption certificate claiming multiple points of use, the seller is relieved of all obligation to collect, pay or remit the applicable tax and the purchaser shall be obligated to collect, pay or remit the applicable tax on a direct pay basis.

(2) A purchaser delivering an exemption certificate claiming multiple points of use may use any reasonable, but
consistent and uniform, method of apportionment that is supported by the purchaser’s business records as they exist at the time the transaction is reported for sales or use tax purposes.

(3) A purchaser delivering an exemption certificate claiming multiple points of use shall report and pay the appropriate tax to each jurisdiction where concurrent use occurs. The tax due shall be calculated as if the apportioned amount of the digital good, computer software or service had been delivered to each jurisdiction to which the sale is apportioned pursuant to subdivision (2) of this subsection.

(4) The exemption certificate claiming multiple points of use shall remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale’s specific apportionment that is governed by the principles of subdivisions (2) and (3) of this subsection until revoked in writing.

(b) Notwithstanding subsection (a) of this section, when the seller knows that the product will be concurrently available for use in more than one jurisdiction, but the purchaser does not provide an exemption certificate claiming multiple points of use as required in subsection (a), the seller may work with the purchaser to produce the correct apportionment. The purchaser and seller may use any reasonable, but consistent and uniform, method of apportionment that is supported by the seller’s and purchaser’s business records as they exist at the time the transaction is reported for sales or use tax purposes. If the purchaser certifies to the accuracy of the apportionment and the seller accepts the certification, the seller shall collect and remit the tax pursuant to subdivision (3), subsection (a) of this section. In the absence of bad faith on the part of the seller, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the information certified by the purchaser.
(c) When the seller knows that the product will be concurrently available for use in more than one jurisdiction and the purchaser does not have a direct pay permit and does not provide the seller with an exemption certificate claiming multiple points of use as required in subsection (a) of this section, or certification pursuant to subsection (b) of this section, the seller shall collect and remit the tax based on the provisions of section fifteen of this article.

(d) Holders of direct pay permits. — A holder of a direct pay permit may not be required to deliver an exemption certificate claiming multiple points of use to the seller. A direct pay permit holder shall follow the provisions of subdivision (2), subsection (a) of this section in apportioning the tax due on a digital good, computer software or a service that will be concurrently available for use in more than one jurisdiction.


(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication service sold on a call-by-call basis shall be sourced to: (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c) of this section, a sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer’s place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than air-to-ground radiotelephone service and prepaid calling
(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either: The seller’s telecommunications system, or information received by the seller from its service provider, where the system used to transport the signal is not that of the seller.

(3) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced in accordance with section fifteen of this article: Provided, That in the case of a sale of a prepaid wireless calling service, the rule provided in subdivision (5), subsection (a), section fifteen of this article shall include, as an option, the location associated with the mobile telephone number.

(4) A sale of a private communication service is sourced as follows:

(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.
(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

For the purpose of section nineteen of this article, the following definitions apply:

(1) “Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.

(3) “Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) “Customer” means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section nineteen of this article. “Customer” does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider’s licensed service area.
“Customer channel termination point” means the location where the customer either inputs or receives the communications.

“End user” means the person who utilizes the telecommunication service. In the case of an entity, “end user” means the individual who utilizes the service on behalf of the entity.

“Home service provider” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

“Mobile telecommunications service” means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

“Place of primary use” means the street address representative where the customer’s use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, “place of primary use” must be within the licensed service area of the home service provider.

“Post-paid calling service” means the telecommunication service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A post-paid calling service includes a telecommunication service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunication service.

“Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid
for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(12) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(13) “Private communication service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(14) “Service address” means:

(A) The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(B) If the location in paragraph (A) of this subdivision is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or
(C) If the location in paragraphs (A) and (B) of this subdivision are not known, then “service address” means the location of the customer’s place of primary use.

§11-15B-23. Enactment of exemptions.

(a) General rule. — The Legislature may only enact entity-based, use-based and product-based exemptions, from the taxes levied by articles fifteen and fifteen-a of this chapter, in accordance with the provisions of this section and Streamlined Sales and Use Tax Agreement.

(b) Specific rules for product-based exemptions. —

(1) A product-based exemption may be enacted without restriction if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the product.

(2) If Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for the product, a product-based exemption may be enacted for the product only if: (A) The exemption utilizes the product definition in a manner consistent with Part II of the Library of Definitions in Appendix C of the Agreement and Section 327 of the Agreement; and (B) the product-based exemption exempts all items included within a definition in Part II of the Library of Definitions unless the product definition in the Library of Definitions sets out an exclusion for the item or items from the definition.

(c) Specific rules of entity-based and use-based exemptions. —

(1) An entity-based or use-based exemption for a product may be enacted without restriction if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the product.
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(2) If Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for the product, the entity-based or use-based exemption for the product must utilize the product definition in a manner consistent with Part II of the Library of Definitions and Section 327 of the Streamlined Sales and Use Tax Agreement.

(3) An entity-based exemption for an item may be enacted if Part II of the Library of Definition in Appendix C of the Streamlined Sales and Use Tax Agreement does not have a definition for the item but does have a definition for a product that includes the item.

(4) A use-based exemption for an item may not be enacted that effectively constitutes a product-based exemption if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for a product that includes the item.

(5) A use-based exemption for an item may be enacted if Part II of the Library of Definitions in Appendix C of the Streamlined Sales and Use Tax Agreement has a definition for a product that includes the item, if the exemption is not prohibited in subdivision (4) of this subsection, and if the exemption is consistent with the definition in Part II of the Library of Definitions.

(d) **Construction.** — For purposes of complying with the requirements in this section, the inclusion of a product within the definition of tangible personal property is disregarded.


(a) **General rules.** — When a purchaser claims an exemption from paying tax under article fifteen or fifteen-a of this chapter:
(1) A seller registered under the Streamlined Sales and Use Tax Agreement shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase, as determined by the governing board established pursuant to the agreement. A seller not registered under the agreement shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of purchase, as determined by the Tax Commissioner.

(2) A purchaser is not required to provide a signature to claim an exemption from tax unless a paper exemption certificate is used.

(3) The seller shall use the standard form for claiming an exemption electronically that is adopted by the governing board administering the Streamlined Sales and Use Tax Agreement.

(4) The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

(5) The Tax Commissioner may utilize a system wherein the purchaser exempt from the payment of the tax is issued an identification number that is presented to the seller at the time of the sale.

(6) The seller shall maintain proper records of exempt transactions and provide the records to the Tax Commissioner or the Tax Commissioner’s designee.

(7) The Tax Commissioner shall administer use-based and entity-based exemptions when practicable through a direct pay permit, an exemption certificate or another means that does not burden sellers.

(8) After the thirty-first day of December, two thousand seven, in the case of drop shipments, a third-party vendor such
as a drop shipper may claim a resale exemption based on an
exemption certificate provided by its customer/reseller or any
other acceptable information available to the third-party vendor
evidencing qualification for a resale exemption, regardless of
whether the customer/reseller is registered to collect and remit
sales and use taxes in this state, when the sale is sourced to this
state.

(b) The Tax Commissioner shall relieve sellers registered
under the Streamlined Sales and Use Tax Agreement that
follow the requirements of this section from any tax otherwise
applicable if it is determined that the purchaser improperly
claimed an exemption and shall hold the purchaser liable for the
nonpayment of tax. This relief from liability does not apply:

(A) To a seller who fraudulently fails to collect the tax;

(B) To a seller who solicits purchasers to participate in the
unlawful claim of an exemption;

(C) To a seller who accepts an exemption certificate when
the purchaser claims an entity-based exemption when: (i) The
subject of the transaction sought to be covered by the exemp-
tion certificate is actually received by the purchaser at a
location operated by the seller; and (ii) the state in which that
location resides provides an exemption certificate that clearly
and affirmatively indicates (graying out exemption reason types
on uniform form and posting it on a state’s web site is an
indicator) that the claimed exemption is not available in that
state; or

(D) To a seller who accepts an exemption certificate
claiming multiple points of use for tangible personal property
other than computer software for which exemption claiming
multiple points of use is acceptable under section eighteen of
this article.
(c) Time within which seller must obtain exemption certificates. — A seller is relieved from paying tax otherwise applicable under article fifteen or fifteen-a of this chapter if the seller obtains a fully completed exemption certificate or captures the relevant data elements required under the Streamlined Sales and Use Tax Agreement within ninety days subsequent to the date of sale.

(1) If the seller has not obtained an exemption certificate or all relevant data elements, the seller may, within one hundred twenty days subsequent to a request for substantiation by the Tax Commissioner, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith. For purposes of this section, the Tax Commissioner may continue to apply this state’s standards of good faith until a uniform standard for good faith is defined in the Streamlined Sales and Use Tax Agreement.

(2) Nothing in this section shall affect the ability of the Tax Commissioner to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

(3) Notwithstanding the preceding provisions of this section, when an exemption may be claimed by exemption certificate, a seller is relieved from paying the tax otherwise applicable if the seller obtains a blanket exemption certificate from a purchaser with which the seller has a recurring business relationship. The Tax Commissioner may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the buyer and seller. For purposes of this subdivision, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions.
98  (d) Exception. — No exemption certificate or direct pay
99  permit number is required when the sale is exempt per se from
100  the taxes imposed by articles fifteen and fifteen-a of this
101  chapter.

§11-15B-35. Local rate and boundary changes.

  (a) General. — Local tax rate changes shall be effective
  only on the first day of a calendar quarter after a minimum of
  sixty days’ notice to the sellers, except as provided in subsec-
  tion (b) of this section.

  (b) Printed catalogs. — Local tax rate changes shall apply
  to purchases from printed catalogs where the purchaser
  computed the tax based upon the local tax rate published in the
  catalog only on and after the first day of a calendar quarter after
  a minimum of one hundred twenty days’ notice to the sellers.

  (c) Local boundary changes. — A local jurisdiction
  boundary change shall first apply for purposes of computation
  of a local sales and use tax on the first day of a calendar quarter
  after a minimum of sixty days’ notice to sellers.

  (d) Database of local jurisdiction boundaries. —

  (1) The state shall provide and maintain a database that
  describes boundary changes for all taxing jurisdictions. This
  database shall include a description of the change and the
  effective date of the change for sales and use tax purposes.

  (2) The state shall provide and maintain a database of all
  sales and use tax rates for all of the jurisdictions levying taxes
  within the state. For the identification of states, counties and
  cities, codes corresponding to the rates must be provided
  according to federal information processing standards (FIPS) as
developed by the National Institute of Standards and Technol-
y. For the identification of all other jurisdictions, codes
corresponding to the rates must be in the format determined by the governing board.

(3) The state shall provide and maintain a database that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. The state must apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(4) This state shall have the option of providing address-based boundary database records for assigning taxing jurisdictions and their associated rates which are in addition to the requirements of subdivision (3) of this subsection. The database records must be in the same approved format as the database records pursuant to subdivision (3) of this subsection and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act (4 U. S. C. §119(a)). The governing board may allow the state to require sellers that register under the agreement to use an address-based database provided by the state. If the state develops address-based assignment database records pursuant to the agreement, a seller or certified service provider may use those database records in place of the five- and nine-digit zip code database records provided in subdivision (3) of this subsection. If a seller or
certified service provider is unable to determine the applicable
rate and jurisdiction using an address-based database record
after exercising due diligence, the seller or certified service
provider may apply the nine-digit zip code designation
applicable to a purchase. If a nine-digit zip code designation is
not available for a street address or if a seller or certified
service provider is unable to determine the nine-digit zip code
designation applicable to a purchase after exercising due
diligence to determine the designation, the seller or certified
service provider may apply the rate for the five-digit zip code
area. For the purposes of this subsection, there is a rebuttable
presumption that a seller or certified service provider has
exercised due diligence if the seller or certified service provider
has attempted to determine the tax rate and jurisdiction by
utilizing software approved by the governing board that makes
this assignment from the address and zip code information
applicable to the purchase.

(5) The Tax Commissioner, after meeting the requirements
of subdivision (3) of this subsection, may certify vendor
provided address-based databases for assigning tax rates and
jurisdictions. The databases must be in the same approved
format as the database records pursuant to subdivision (4) of
this subsection and must meet the requirements developed
pursuant to the federal Mobil Telecommunications Sourcing
Act (4 U. S. C. §119(a)). If the state certifies a vendor address-
based database, a seller or certified service provider may use
that database in place of the database provided for in subdivi-
sion (3) or (4) of this subsection. Vendors providing address-
based databases may request certification of their databases
from the governing board. Certification by the governing board
does not replace the requirement that the databases be certified
by the state.

§11-15B-36. Relief from certain liability for state and local taxes.
(a) General. — Sellers and certified service providers registered under the streamlined sales and use tax agreement to collect sales and use taxes imposed by this state or a political subdivision of this state who charged and collected the incorrect amount of sales or use taxes resulting from the seller or the certified service provider relying on erroneous data provided by this state on tax rates, boundaries or taxing jurisdiction assignments shall be held harmless by the Tax Commissioner and the local taxing jurisdiction.

(b) Exception. — After providing adequate notice as determined by the governing board, if the state provides an address-based database for assigning taxing jurisdictions pursuant to subdivision (4) or (5), subsection (d), section thirty-five of this article, the state may cease providing liability relief for errors resulting from reliance on the database provided by the Tax Commissioner under subdivision (3) of said subsection. If a seller demonstrates that requiring the use of the address-based database would create an undue hardship, the Tax Commissioner and the governing board may extend the relief from liability to that seller for a designated period of time.

§11-15B-37. State review and approval of certified automated system software and certain liability relief.

(a) The Tax Commissioner shall review software submitted to the governing board for certification as a certified automated system under the agreement. The Tax Commissioner’s review shall include a review to determine that the program adequately classifies the State of West Virginia’s product-based exemptions. Upon completion of the review, the Tax Commissioner shall certify to the governing board its acceptance of the classifications made by the system.

(b) Certified service providers and Model 2 sellers shall be relieved of liability for not collecting sales or use taxes
resulting from the certified service provider or Model 2 seller relying on the certification provided by the Tax Commissioner.

(c) Certified service providers shall be relieved of liability for not collecting sales and use taxes in the same manner as provided to sellers under the provisions of section twenty-four of this article.

(d) The governing board and the State of West Virginia shall not be responsible for classification of an item or transaction within the product-based exemptions certified and the relief from liability provided in this section shall not be available for a certified service provider or a Model 2 seller that has incorrectly classified an item or transaction into a product-based exemption certified by the Tax Commissioner: Provided, That the provisions of this subsection shall not apply to the individual listing of items or transactions within a product definition approved by the governing board or the Tax Commissioner.

(e) If the Tax Commissioner determines that an item or transaction is incorrectly classified as to its taxability, the Tax Commissioner shall notify the certified service provider or Model 2 seller of the incorrect classification. The certified service provider or Model 2 seller shall have ten days to revise the classification after receipt of notice from the Tax Commissioner of the determination. Upon expiration of the ten days, the certified service provider or Model 2 seller shall be liable for the failure to collect the correct amount of sales or use taxes due and owing the state.
AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand four, but prior to the first day of January, two
thousand six, shall be given effect in determining the taxes
imposed by this article to the same extent those changes are
allowed for federal income tax purposes, whether the changes
are retroactive or prospective, but no amendment to the laws of
the United States made on or after the first day of January, two
thousand six, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust”
does not include a medical savings account established pursuant
to section twenty, article fifteen, chapter thirty-three of this
code or section fifteen, article sixteen of said chapter. Employer
contributions to a medical savings account established pursuant
to said sections are not “wages” for purposes of withholding
under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent
additional tax imposed on taxable withdrawals from a medical
savings account under section twenty, article fifteen, chapter
thirty-three of this code and the twenty percent additional tax
imposed on taxable withdrawals from a medical savings
account under section fifteen, article sixteen of said chapter
which are collected by the Tax Commissioner as tax collected
under this article.

(d) Effective date. — The amendments to this section
enacted in the year two thousand six are retroactive to the
extent allowable under federal income tax law. With respect to
taxable years that began prior to the first day of January, two
thousand six, the law in effect for each of those years shall be
fully preserved as to that year, except as provided in this
section.

(e) For purposes of the refundable credit allowed to a low
income senior citizen for property tax paid on his or her
homestead in this state, the term “laws of the United States” as
used in subsection (a) of this section means and includes the
term “low income” as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U. S. Department of Health and Human Services under the authority of 42 U. S. C. §9902(2).

CHAPTER 236

(S. B. 786 — By Senators Bowman, Helmick, Sharpe, Prezioso, Plymale, Edgell, Bailey and McCabe)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 29, 2006.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to calculation of West Virginia adjusted gross income for personal income tax purposes; and subtracting certain severance wages from federal adjusted gross income.

Be it enacted by the Legislature of West Virginia:

That §11-21-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross
income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income unless already included therein the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under section twenty, article
... fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-seven;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and all forms of military retire-
ment, including regular armed forces, reserves and national

guard, including any survivorship annuities derived therefrom,
to the extent includable in gross income for federal income tax
purposes: *Provided, That notwithstanding any provisions in this
code to the contrary this modification shall be limited to the
first two thousand dollars of benefits received under the West
Virginia Public Employees Retirement System, the West
Virginia State Teachers Retirement System and, including any
survivorship annuities derived therefrom, to the extent
includable in gross income for federal income tax purposes for
taxable years beginning after the thirty-first day of December,
one thousand nine hundred eighty-six; and the first two
thousand dollars of benefits received under any federal
retirement system to which Title 4 U. S. C. §111 applies:

*Provided, however, That the total modification under this
paragraph shall not exceed two thousand dollars per person
receiving retirement benefits and this limitation shall apply to
all returns or amended returns filed after the last day of
December, one thousand nine hundred eighty-eight;

(6) Retirement income received in the form of pensions and
annuities after the thirty-first day of December, one thousand
nine hundred seventy-nine, under any West Virginia police,
West Virginia Firemen’s Retirement System or the West
Virginia State Police Death, Disability and Retirement Fund,
the West Virginia State Police Retirement System or the West
Virginia Deputy Sheriff Retirement System, including any
survivorship annuities derived from any of these programs, to
the extent includable in gross income for federal income tax
purposes;

(7) (A) For taxable years beginning after the thirty-first day
of December, two thousand, and ending prior to the first day of
January, two thousand three, an amount equal to two percent
multiplied by the number of years of active duty in the armed
forces of the United States of America with the product thereof
multiplied by the first thirty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and National Guard paid by the United States or by this state after the thirty-first day of December, two thousand, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after the thirty-first day of December, two thousand two, the first twenty thousand dollars of military retirement income, including retirement income from the regular armed forces, reserves and National Guard paid by the United States or by this state after the thirty-first day of December, two thousand two, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: Provided, however, That:
(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

(9) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by the surviving spouse of any person who had attained the age of sixty-five or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: Provided, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is eight thousand dollars or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7) and (8) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between eight thousand dollars and the sum of subdivisions (1), (2), (5), (6), (7) and (8) of this subsection;

(10) Contributions from any source to a medical savings account established by or for the individual pursuant to section.
twenty, article fifteen, chapter thirty-three of this code or
section fifteen, article sixteen of said chapter, plus interest
earned on the account, to the extent includable in federal
adjusted gross income for federal tax purposes: Provided, That
the amount subtracted pursuant to this subdivision for any one
taxable year may not exceed two thousand dollars plus interest
earned on the account. For married individuals filing a joint
return, the maximum deduction is computed separately for each
individual;

(11) For the two thousand six taxable year only, severance
wages received by a taxpayer from an employer as the result of
the taxpayer’s permanent termination from employment
through a reduction in force and through no fault of the
employee, not to exceed thirty thousand dollars. For purposes
of this subdivision:

(i) The term “severance wages” means any monetary
compensation paid by the employer in the taxable year as a
result of permanent termination from employment in excess of
regular annual wages or regular annual salary;

(ii) The term “reduction in force” means a net reduction in
the number of employees employed by the employer in West
Virginia, determined based on total West Virginia employment
of the employer’s controlled group;

(iii) The term “controlled group” means one or more chains
of corporations connected through stock ownership with a
common parent corporation if stock possessing at least fifty
percent of the voting power of all classes of stock of each of the
corporations is owned directly or indirectly by one or more of
the corporations and the common parent owns directly stock
possessing at least fifty percent of the voting power of all
classes of stock of at least one of the other corporations;
The term "corporation" means any corporation, joint-stock company or association and any business conducted by a trustee or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or similar written instrument; and

Any other income which this state is prohibited from taxing under the laws of the United States.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer’s share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under section nineteen of this article.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under section seventeen of this article.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. — (1) Changes in the language of this section enacted in the year two thousand shall apply to taxable years beginning after the thirty-first day of December, two thousand.

(2) Changes in the language of this section enacted in the year two thousand two shall apply to taxable years beginning after the thirty-first day of December, two thousand two.
AN ACT to amend and reenact §11-21-21 of the Code of West Virginia, 1931, as amended, relating to personal income tax; and subjecting the refundable senior citizens’ tax credit to a three-year statute of limitations for filing a claim for refund.

Be it enacted by the Legislature of West Virginia:

That §11-21-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-21. Senior citizens’ tax credit for property tax paid on first ten thousand dollars of taxable assessed value of a homestead in this state.

   (a) Allowance of credit. — A low-income person who is allowed a twenty thousand dollar homestead exemption from the assessed value of his or her homestead for ad valorem property tax purposes, as provided in section three, article six-b of this chapter, shall be allowed a refundable credit against the taxes imposed by this article equal to the amount of ad valorem property taxes paid on up to the first ten thousand dollars of taxable assessed value of the homestead for property tax years that begin on or after the first day of January, two thousand three: Provided, That the credit for each property tax year shall
be claimed by filing a claim for refund within three years after the due date for the personal income tax return upon which the credit is first available.

(b) Terms defined. — For purposes of this section:

(1) “Low income” means federal adjusted gross income for the taxable year that is one hundred fifty percent or less of the federal poverty guideline for the year in which property tax was paid, based upon the number of individuals in the family unit residing in the homestead, as determined annually by the United States Secretary of Health and Human Services.

(2) “Taxes paid” means the aggregate of regular levies, excess levies and bond levies extended against not more than ten thousand dollars of the taxable assessed value of a homestead that are paid during the calendar year determined after application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for a property tax year that begins on or after the first day of January, two thousand three.

(c) Legislative rule. — The Tax Commissioner shall propose a legislative rule for promulgation as provided in article three, chapter twenty-nine-a of this code to explain and implement this section.

(d) Confidentiality. — The Tax Commissioner shall utilize property tax information in the statewide electronic data processing system network to the extent necessary for the purpose of administering this section, notwithstanding any provision of this code to the contrary.
CHAPTER 238

(S. B. 582 — By Senators Helmick, Plymale, Prezioso and Minard)

[Passed March 8, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-54, relating to personal income tax; and requiring certain tax preparers to file certain personal income tax returns of their clients electronically.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-54, to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-54. Electronic filing for certain tax preparers.

(a) If an income tax return preparer filed more than one hundred personal income tax returns for any taxable year that began after the first day of January, two thousand five, and if during calendar year two thousand six or any calendar year thereafter that income tax preparer prepares one or more personal income tax returns using tax preparation software for a previous taxable year, then for each current taxable year all unamended personal income tax returns prepared by that preparer shall be filed electronically, except as provided in subsections (c) and (d) of this section.
(b) For purposes of this section:

(1) “Income tax preparer” means any person who prepares, in exchange for compensation, or who employs another person to prepare, in exchange for compensation, all or a substantial portion of any return for a taxpayer for the tax imposed by this article and who is identified as the preparer for the taxpayer on the return. A person who only performs those acts described in clauses (i) through (iv) of Section 7701(a)(36)(B) of the Internal Revenue Code with respect to the preparation of a return for a trust or estate for which he or she is a fiduciary or a return for a partnership of which he or she is a partner is not an income tax preparer for purposes of this section.

(2) “Electronic filing” or “e-filing” means filing using electronic technology such as computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology approved by the Tax Commissioner, in such manner as he or she deems acceptable.


(c) Subsection (a) of this section shall cease to apply to an income tax preparer if, for the previous taxable year, that income tax preparer prepared no more than twenty-five personal income tax returns.

(d) This section first applies to personal income tax returns required to be filed for taxable years beginning the first day of January, two thousand six. This section does not require electronic filing of: (1) Returns that were not required to be filed for taxable years beginning prior to that date; (2) returns for prior taxable years beginning prior to that date; or (3) amended returns for any taxable year.
(e) An income tax preparer who is required to e-file under this section but does not do so is liable for a penalty in the amount of twenty-five dollars for each return prepared that is not e-filed, unless the preparer shows that the failure to do so is due to reasonable cause rather than willful neglect. For purposes of this subsection, reasonable cause includes, but is not limited to, a documented election by a client not to file electronically.

(f) The commissioner shall implement the provisions of this section using any combination of notices, forms, instructions and rules that he or she deems necessary.

CHAPTER 239

(S. B. 626 — By Senators Helmick and Minard)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating to personal income tax; requiring employers to submit copy of employee’s withholding statement with an annual reconciliation of income tax withheld; and requiring employer with two hundred fifty or more employees to submit withholding statements electronically.

Be it enacted by the Legislature of West Virginia:

That §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.
§11-21-74. Filing of employer’s withholding return and payment of withheld taxes; annual reconciliation; e-filing required for certain tax preparers and employers.

(a) General. — Every employer required to deduct and withhold tax under this article shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the taxes so required to be deducted and withheld. Where the average quarterly amount so deducted and withheld by any employer is less than one hundred fifty dollars and the aggregate for the calendar year can reasonably be expected to be less than six hundred dollars, the Tax Commissioner may by regulation permit an employer to file an annual return and pay over to the Tax Commissioner the taxes deducted and withheld on or before the last day of the month following the close of the calendar year: Provided, That the Tax Commissioner may, by nonemergency legislative rules promulgated pursuant to article three, chapter twenty-nine-a of this code, change the minimum amounts established by this subsection. The Tax Commissioner may, if he or she believes such action necessary for the protection of the revenues, require any employer to make the return and pay to him or her the tax deducted and withheld at any time, or from time to time.

(b) Monthly returns and payments of withheld tax on and after the first day of January, two thousand one. — Notwithstanding the provisions of subsection (a) of this section, on and after the first day of January, two thousand one, every employer required to deduct and withhold tax under this article shall, for each of the first eleven months of the calendar year, on or before the twentieth day of the succeeding month and for the last calendar month of the year, on or before the last day of the succeeding month, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner the
(c) Annual returns and payments of withheld tax of certain domestic and household employees. — Employers of domestic and household employees whose withholdings of federal income tax are annually paid and reported by the employer pursuant to the filing of Schedule H of federal form 1040, 1040A, 1040NR, 1040NR-EZ, 1040SS or 1041 may, on or before the thirty-first day of January next succeeding the end of the calendar year for which withholdings are deducted and withheld, file an annual withholding return with the Tax Commissioner and annually remit to the Tax Commissioner West Virginia personal income taxes deducted and withheld for the employees. The Tax Commissioner may promulgate legislative or other rules pursuant to article three, chapter twenty-nine-a of this code for implementation of this subsection.

(d) Deposit in trust for Tax Commissioner. — Whenever any employer fails to collect, truthfully account for, or pay over the tax, or to make returns of the tax as required in this section, the Tax Commissioner may serve a notice requiring the employer to collect the taxes which become collectible after service of the notice, to deposit the taxes in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the tax in the separate account until payment over to the Tax Commissioner. The notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(e) Accelerated payment. — (1) Notwithstanding the provisions of subsections (a) and (b) of this section, for calendar years beginning after the thirty-first day of December,
one thousand nine hundred ninety, every employer required to
deduct and withhold tax whose average payment per calendar
month for the preceding calendar year under subsection (b) of
this section exceeded one hundred thousand dollars shall remit
the tax attributable to the first fifteen days of June each year on
or before the twenty-third day of June.

(2) For purposes of complying with subdivision (1) of this
subsection, the employer shall remit an amount equal to the
withholding tax due under this article on employee compensa-
tion subject to withholding tax payable or paid to employees for
the first fifteen days of June or, at the employer’s election, the
employer may remit an amount equal to fifty percent of the
employer’s liability for withholding tax under this article on
compensation payable or paid to employees for the preceding
month of May.

(3) For an employer which has not been in business for a
full calendar year, the total amount the employer was required
to deduct and withhold under subsection (b) of this section for
the prior calendar year shall be divided by the number of
months, including fractions of a month, that it was in business
during the prior calendar year, and if that amount exceeds one
hundred thousand dollars, the employer shall remit the tax
attributable to the first fifteen days of June each year on or
before the twenty-third day of June, as provided in subdivision
(2) of this subsection.

(4) When an employer required to make an advanced
payment of withholding tax under subdivision (1) of this
subsection makes out its return for the month of June, which is
due on the twentieth day of July, that employer may claim as a
credit against its liability under this article for tax on employee
compensation paid or payable for employee services rendered
during the month of June the amount of the advanced payment
of tax made under subdivision (1) of this subsection.
(f) The amendments to this section enacted in the year two thousand six are effective for tax years beginning on or after the first day of January, two thousand six.

(g) An annual reconciliation of West Virginia personal income tax withheld shall be submitted by the employer on or before the twenty-eighth day of February following the close of the calendar year, together with Tax Division copies of all withholding tax statements for that preceding calendar year. The reconciliation shall be accompanied by a list of the amounts of income withheld for each employee in such form as the Tax Commissioner prescribes and shall be filed separately from the employer’s monthly or quarterly return.

(h) Any employer required to file a withholding return for two hundred fifty or more employees shall file its return using electronic filing as defined in section fifty-four of this article. An employer that is required to file electronically but does not do so is subject to a penalty in the amount of twenty-five dollars per employee for whom the return was not filed electronically, unless the employer shows that the failure is due to reasonable cause and not due to willful neglect.

CHAPTER 240

(S. B. 530 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed March 8, 2006; in effect from passage.] [Approved by the Governor on March 23, 2006.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating meaning of
Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of December, two thousand four, but prior to the first day of January, two thousand six, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand six, shall be given any effect.

(b) The term “Internal Revenue Code of 1986” means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the
federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

c) Effective date. — The amendments to this section enacted in the year two thousand six are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of January, two thousand six, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 241

(H. B. 3295 — By Delegates Morgan, Howard and Sobonya)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §11A-2-13 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11A-3-2 and §11A-3-13 of said code, all relating to delinquent property taxes; and increasing certain fees charged to collect the taxes.

Be it enacted by the Legislature of West Virginia:
That §11A-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11A-3-2 and §11A-3-13 of said code be amended and reenacted, all to read as follows:

Article
2. Delinquency and Methods of Enforcing Payment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.


A copy of each of the delinquent lists shall be posted at the front door of the courthouse of the county at least two weeks before the session of the county commission at which they are to be presented for examination. At the same time a copy of each list shall be published as a Class I-O 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. Only the aggregate amount of the taxes owed by each person need be published. To cover the costs of preparing, publishing and posting the delinquent lists, a charge of twenty dollars shall be added to the taxes and interest already due on each item listed.

Any person whose taxes were delinquent on May first may have his name removed from the delinquent lists prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of the taxes and costs owed by such person at the date of such redemption. The sheriff shall collect a charge of only three dollars if redemption is made before the list is delivered for publication. Costs collected by the sheriff hereunder which are not expended for publication shall be paid into the general county fund.

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.
§11A-3-2. Second publication of list of delinquent real estate; notice.

§11A-3-13. Publication by sheriff of sales list.

*§11A-3-2. Second publication of list of delinquent real estate; notice.

(a) On or before the tenth day of September of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his or her county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that tax liens for the following described tracts or lots of land or undivided interests therein in the County of ________________ which are delinquent for the nonpayment of taxes for the year (or years) 20__, will be offered for sale by the undersigned sheriff (or collector) at public auction at the front door of the courthouse of the county, between the hours of nine in the morning and four in the afternoon, on the ____ day of ________________, 20__.

Tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, will be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest and charges which shall be due thereon to the date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
</table>

*CLERK'S NOTE: This section was also amended by H. B. 2947 (Chapter 242), which passed prior to this act.*
Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before sale, of the total amount of taxes, interest and charges due thereon up to the date of redemption. Payment received within fourteen business days prior to the date of sale must be paid by cashier check, money order, certified check or United States currency.

Given under my hand this ____________ day of ________________, 20__.  

________________________
Sheriff (or collector).

The sheriff shall publish the list and notice prior to the sale date fixed in the notice as a Class III-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

(b) In addition to such publication, no less than thirty days prior to the sale, the sheriff shall send a notice of the delinquency and the date of sale by certified mail: (1) To the last known address of each person listed in the land books whose taxes are delinquent; (2) to each person having a lien on real property upon which the taxes are due as disclosed by a statement filed with the sheriff pursuant to the provisions of section three of this article; (3) to each other person with an interest in the property or with a fiduciary relationship to a person with an interest in the property who has in writing delivered to the sheriff on a form prescribed by the tax commissioner a request for such notice of delinquency; and (4) in the case of property which includes a mineral interest but does not include an interest in the surface other than an interest for the purpose of developing the minerals, to each person who has in writing delivered to the sheriff, on a form prescribed by
the tax commissioner, a request for such notice which identifies
the person as an owner of an interest in the surface of real
property that is included in the boundaries of such property:
Provided, That in a case where one owner owns more than one
parcel of real property upon which taxes are delinquent, the
sheriff may, at his or her option, mail separate notices to the
owner and each lienholder for each parcel or may prepare and
mail to the owner and each lienholder a single notice which
pertains to all such delinquent parcels. If the sheriff elects to
mail only one notice, that notice shall set forth a legally
sufficient description of all parcels of property on which taxes
are delinquent. In no event shall failure to receive the mailed
notice by the landowner or lienholder affect the validity of the
title of the property conveyed if it is conveyed pursuant to
section twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing the
second delinquent list, a charge of twenty-five dollars shall be
added to the taxes, interest and charges already due on each
item and all such charges shall be stated in the list as a part of
the total amount due.

(2) To cover the cost of preparing and mailing notice to the
landowner, lienholder or any other person entitled thereto
pursuant to this section, a charge of ten dollars per addressee
shall be added to the taxes, interest and charges already due on
each item and all such charges shall be stated in the list as a part
of the total amount due.

(d) Any person whose taxes were delinquent on the first day
of September may have his or her name removed from the
delinquent list prior to the time the same is delivered to the
newspapers for publication by paying to the sheriff the full
amount of taxes and costs owed by the person at the date of
such redemption. In such case, the sheriff shall include but three
dollars of the costs provided in this section in making such
redemption. Costs collected by the sheriff hereunder which are
not expended for publication and mailing shall be paid into the
general county fund.

§11A-3-13. Publication by sheriff of sales list.

Within one month after completion of the sale, the sheriff
shall prepare and publish a list of all the sales and certifications
made by him or her, in form or effect as follows, which list
shall be published as a Class II-0 legal advertisement in
compliance with the provisions of article three, chapter fifty-
nine of this code, and the publication area for such publication
shall be the county.

List of tax liens on real estate sold in the county of
_____________________, in the
month (or months) of _______________________,
20___, for nonpayment of taxes thereon for the year (or years)
20___, and purchased by individuals or certified to the auditor
of the State of West Virginia:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Local description of lands</th>
<th>Quantity of land charged</th>
<th>Quantity of land for which tax lien is sold</th>
<th>Name of purchaser</th>
<th>Whole amount paid by purchaser</th>
</tr>
</thead>
</table>

The owner of any real estate listed above, or any other
person entitled to pay the taxes thereon, may, however, redeem
such real estate as provided by law.

Given under my hand this ______________ day of
_______________, 20____.

__________________________
Sheriff
To cover the costs of preparing and publishing such list, a charge of fifteen shall be added to the taxes, interest and charges already due on each item listed.

CHAPTER 242

(Com. Sub. for H. B. 2947 — By Delegates Hamilton, Stemple, H. White, Schadler, Sobonya, Ellem, Poling and Crosier)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2006.]

AN ACT to amend and reenact §11A-3-2 and §11A-3-4 of the Code of West Virginia, 1931, as amended, all relating to requiring payments for delinquent real estate taxes submitted within fourteen days prior to the date of the sheriff’s sale be made by cashier’s check, money order, certified check or United States currency.

Be it enacted by the Legislature of West Virginia:

That §11A-3-2 and §11A-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHATE AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-2. Second publication of list of delinquent real estate; notice.
§11A-3-4. Redemption after second publication and before sale.

*§11A-3-2. Second publication of list of delinquent real estate; notice.

*CLERK’S NOTE: This section was also amended by H. B. 3295 (Chapter 241), which passed subsequent to this act.
(a) On or before the tenth day of September of each year, the sheriff shall prepare a second list of delinquent lands, which shall include all real estate in his or her county remaining delinquent as of the first day of September, together with a notice of sale, in form or effect as follows:

Notice is hereby given that tax liens for the following described tracts or lots of land or undivided interests therein in the County of _____________ which are delinquent for the nonpayment of taxes for the year (or years) 20__, will be offered for sale by the undersigned sheriff (or collector) at public auction at the front door of the courthouse of the county, between the hours of nine in the morning and four in the afternoon, on the ____ day of ________________, 20__.

Tax liens on each unredeemed tract or lot, or each unredeemed part thereof or undivided interest therein, will be sold at public auction to the highest bidder in an amount which shall not be less than the taxes, interest and charges which shall be due thereon to the date of sale, as set forth in the following table:

<table>
<thead>
<tr>
<th>Name of person charged with taxes</th>
<th>Quantity of land</th>
<th>Local description</th>
<th>Total amount of taxes, interest and charges due to date of sale</th>
</tr>
</thead>
</table>

Any of the aforesaid tracts or lots, or part thereof or an undivided interest therein, may be redeemed by the payment to the undersigned sheriff (or collector) before sale, of the total amount of taxes, interest and charges due thereon up to the date of redemption. Payments received within fourteen business days prior to the date of sale must be paid by cashier check, money order, certified check or United States currency.
Given under my hand this ____________ day of
______________________, 20____.

__________________________

Sheriff (or collector).

The sheriff shall publish the list and notice prior to the sale
date fixed in the notice as a Class III-0 legal advertisement in
compliance with the provisions of article three, chapter
fifty-nine of this code, and the publication area for such
publication shall be the county.

(b) In addition to such publication, no less than thirty days
prior to the sale the sheriff shall send a notice of the delin-
quency and the date of sale by certified mail: (1) To the last
known address of each person listed in the land books whose
taxes are delinquent; (2) to each person having a lien on real
property upon which the taxes are due as disclosed by a
statement filed with the sheriff pursuant to the provisions of
section three of this article; (3) to each other person with an
interest in the property or with a fiduciary relationship to a
person with an interest in the property who has in writing
delivered to the sheriff a request for such notice of delinquency; and (4)
in the case of property which includes a mineral interest but
does not include an interest in the surface other than an interest
for the purpose of developing the minerals, to each person who
has in writing delivered to the sheriff, on a form prescribed by
the Tax Commissioner, a request for such notice which
identifies the person as an owner of an interest in the surface of
real property that is included in the boundaries of such property:
Provided, That in a case where one owner owns more than one
parcel of real property upon which taxes are delinquent, the
sheriff may, at his option, mail separate notices to the owner
and each lienholder for each parcel or may prepare and mail to
the owner and each lienholder a single notice which pertains to all such delinquent parcels. If the sheriff elects to mail only one notice, that notice shall set forth a legally sufficient description of all parcels of property on which taxes are delinquent. In no event shall failure to receive the mailed notice by the landowner or lienholder affect the validity of the title of the property conveyed if it is conveyed pursuant to section twenty-seven or fifty-nine of this article.

(c) (1) To cover the cost of preparing and publishing the second delinquent list, a charge of twelve dollars and fifty cents shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(2) To cover the cost of preparing and mailing notice to the landowner, lienholder or any other person entitled thereto pursuant to this section, a charge of five dollars per addressee shall be added to the taxes, interest and charges already due on each item and all such charges shall be stated in the list as a part of the total amount due.

(d) Any person whose taxes were delinquent on the first day of September may have his or her name removed from the delinquent list prior to the time the same is delivered to the newspapers for publication by paying to the sheriff the full amount of taxes and costs owed by the person at the date of such redemption. In such case, the sheriff shall include but three dollars of the costs provided in this section in making such redemption. Costs collected by the sheriff hereunder which are not expended for publication and mailing shall be paid into the general county fund.

§11A-3-4. Redemption after second publication and before sale.

Any of the real estate included in the list published pursuant to the provisions of section two of this article may be redeemed
at any time before sale as provided in section eighteen, article
two of this chapter. All payments for delinquent real estate
taxes received within fourteen business days prior to the date of
sale must be paid by cashier check, money order, certified
check or United States currency.

CHAPTER 243

(Com. Sub. for S. B. 653 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §5A-6-1, §5A-6-2, §5A-6-4, §5A-6-5,
§5A-6-6 and §5A-6-8 of the Code of West Virginia, 1931, as
amended; to amend said code by adding thereto three new
sections, designated §5A-6-4a, §5A-6-4b and §5A-6-4c; and to
amend and reenact §5A-7-4 of said code, all relating to the Office
of Technology; making legislative findings; defining terms;
providing duties, powers and authority of the Chief Technology
Officer; requiring a four-year strategic plan; authorizing promul-
gation of legislative rules; providing authority over security of
state government information; managing information technology
and establishing a Project Management Office; requiring state
spending units to provide notice and obtain approval of Chief
Technology Officer for certain information technology and
telecommunication projects; limiting when fees may be charged;
disallowing certain expenditures in excess of spending authority;
transferring duties relating to disaster recovery centers to the
Chief Technology Officer; requiring at least two redundant sites
for disaster recovery centers; and exempting and limiting application to certain state entities.

Be it enacted by the Legislature of West Virginia:

That §5A-6-1, §5A-6-2, §5A-6-4, §5A-6-5, §5A-6-6 and §5A-6-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto three new sections, designated §5A-6-4a, §5A-6-4b and §5A-6-4c; and that §5A-7-4 of said code be amended and reenacted, all to read as follows:

Article
6. Office of Technology.
7. Information Services and Communications Divisions.

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-1. Findings and purposes.
§5A-6-2. Definitions.
§5A-6-4. Powers and duties of the Chief Technology Officer; generally.
§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.
§5A-6-4b. Project management duties of the Chief Technology Officer; establishment of the Project Management Office and duties of the director of the Project Management Office.
§5A-6-4c. Major information technology projects proposals and the establishment of steering committees.
§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.
§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.
§5A-6-8. Exemptions.

§5A-6-1. Findings and purposes.

1 The Legislature finds and declares that information technology is essential to finding practical solutions to the everyday problems of government and that the management goals and purposes of government are furthered by the development of compatible, linked information systems across
government. Therefore, it is the purpose of this article to create, as an integral part of the Department of Administration, the Office of Technology with the authority to advise and make recommendations to all state spending units on their information systems and to have the authority to oversee coordination of the state’s technical infrastructure.

§5A-6-2. Definitions.

As used in this article:

(a) “Information systems” means computer-based information equipment and related services designed for the automated transmission, storage, manipulation and retrieval of data by electronic or mechanical means;

(b) “Information technology” means data processing and telecommunications hardware, software, services, supplies, personnel, maintenance, training and includes the programs and routines used to employ and control the capabilities of data processing hardware;

(c) “Information equipment” includes central processing units, front-end processing units, minicomputers, microprocessors and related peripheral equipment, including data storage devices, networking equipment, services, routers, document scanners, data entry equipment, terminal controllers, data terminal equipment, computer-based word processing systems other than memory typewriters;

(d) “Related services” includes feasibility studies, systems design, software development and time-sharing services whether provided by state employees or others;

(e) “Telecommunications” means any transmission, emission or reception of signs, signals, writings, images or sounds of intelligence of any nature by wire, radio or other
electromagnetic or optical systems. The term includes all facilities and equipment performing those functions that are owned, leased or used by the executive agencies of state government;

(f) "Chief Technology Officer" means the person holding the position created in section three of this article and vested with authority to oversee state spending units in planning and coordinating information systems that serve the effectiveness and efficiency of the state and individual state spending units and further the overall management goals and purposes of government;

(g) "Technical infrastructure" means all information systems, information technology, information equipment, telecommunications and related services as defined in this section;

(h) "Information technology project" means the process by which telecommunications, automated data processing, databases, the internet, management information systems and related information, equipment, goods and services are planned, procured and implemented;

(i) "Major information technology project" means any information technology project estimated to cost more than one hundred thousand dollars or require more than three hundred man hours to complete; and

(j) "Steering committee" means an internal agency oversight committee established jointly by the Chief Technology Officer and the agency requesting the project, which shall include representatives from the Office of Technology and at least one representative from the agency requesting the project.

§5A-6-4. Powers and duties of the Chief Technology Officer; generally.
(a) With respect to all state spending units the Chief Technology Officer may:

1. Develop an organized approach to information resource management for this state;

2. Provide, with the assistance of the Information Services and Communications Division of the Department of Administration, technical assistance to the administrators of the various state spending units in the design and management of information systems;

3. Evaluate, in conjunction with the Information Services and Communications Division, the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units;

4. Develop a mechanism for identifying those instances where systems of paper forms should be replaced by direct use of information equipment and those instances where applicable state or federal standards of accountability demand retention of some paper processes;

5. Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of information;

6. Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

7. Engage in any other activities as directed by the Governor;
(8) Charge a fee to the state spending units for evaluations performed and technical assistance provided under the provisions of this section, to be based entirely on direct personnel costs incurred in providing the evaluation or technical assistance and charged only after the evaluation or technical assistance has been provided. All fees collected by the Chief Technology Officer shall be deposited in a special account in the State Treasury to be known as the Chief Technology Officer Administration Fund. Expenditures from the fund shall be made by the Chief Technology Officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That the provisions of section eighteen, article two, chapter eleven-b of this code shall not operate to permit expenditures in excess of the spending authority authorized by the Legislature. Amounts collected which are found to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(9) Monitor trends and advances in information technology and technical infrastructure;

(10) Direct the formulation and promulgation of policies, guidelines, standards and specifications for the development and maintenance of information technology and technical infrastructure, including, but not limited to:

(A) Standards to support state and local government exchange, acquisition, storage, use, sharing and distribution of electronic information;

(B) Standards concerning the development of electronic transactions, including the use of electronic signatures;
(C) Standards necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value and convenience from investments made in technology;

(D) Guidelines directing the establishment of statewide standards for the efficient exchange of electronic information and technology, including technical infrastructure, between the public and private sectors;

(E) Technical and data standards for information technology and related systems to promote efficiency and uniformity;

(F) Technical and data standards for the connectivity, priorities and interoperability of technical infrastructure used for homeland security, public safety and health and systems reliability necessary to provide continuity of government operations in times of disaster or emergency for all state, county and local governmental units; and

(G) Technical and data standards for the coordinated development of infrastructure related to deployment of electronic government services among state, county and local governmental units;

(11) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(12) Direct the compilation and maintenance of an inventory of information technology and technical infrastructure of the state, including infrastructure and technology of all state, county and local governmental units, which may include personnel, facilities, equipment, goods and contracts for service, wireless tower facilities, geographic information
systems and any technical infrastructure or technology that is
used for law enforcement, homeland security or emergency
services;

(13) Develop job descriptions and qualifications necessary
to perform duties related to information technology as outlined
in this article; and

(14) Promulgate legislative rules, in accordance with the
provisions of chapter twenty-nine-a of this code, as may be
necessary to standardize and make effective the administration
of the provisions of article six of this chapter.

(b) With respect to executive agencies, the Chief Technol-
age Officer may:

(1) Develop a unified and integrated structure for informa-
tion systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and
time lines for addressing the information technology require-
ments of the various executive agencies of state government;

(3) Exercise authority delegated by the Governor by
executive order to overrule and supersede decisions made by
the administrators of the various executive agencies of
government with respect to the design and management of
information systems and the purchase, lease or acquisition of
information equipment and contracts for related services;

(4) Draw upon staff of other executive agencies for advice
and assistance in the formulation and implementation of
administrative and operational plans and policies; and

(5) Recommend to the Governor transfers of equipment and
human resources from any executive agency and the most
effective and efficient uses of the fiscal resources of executive
agencies, to consolidate or centralize information-processing operations.

(c) The Chief Technology Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

(d) The Chief Technology Officer shall develop a comprehensive, statewide, four-year strategic information technology and technical infrastructure policy and development plan to be submitted to the Governor and the Joint Committee on Government and Finance. A preliminary plan shall be submitted by the first day of December, two thousand six, and the final plan shall be submitted by the first day of June, two thousand seven. The plan shall include, but not limited to:

(A) A discussion of specific projects to implement the plan;

(B) A discussion of the acquisition, management and use of information technology by state agencies;

(C) A discussion of connectivity, priorities and interoperability of the state’s technical infrastructure with the technical infrastructure of political subdivisions and encouraging the coordinated development of facilities and services regarding homeland security, law enforcement and emergency services to provide for the continuity of government operations in times of disaster or emergency;

(D) A discussion identifying potential market demand areas in which expanded resources and technical infrastructure may be expected;

(E) A discussion of technical infrastructure as it relates to higher education and health;
(F) A discussion of the use of public-private partnerships in the development of technical infrastructure and technology services; and

(G) A discussion of coordinated initiatives in website architecture and technical infrastructure to modernize and improve government to citizen services, government to business services, government to government relations and internal efficiency and effectiveness of services, including a discussion of common technical data standards and common portals to be utilized by state, county and local governmental units.

(e) The Chief Technology Officer shall oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent. The Chief Technology Officer shall establish microwave or other networks and LATA hops; audit telecommunications services and usage; recommend and develop strategies for the discontinuance of obsolete or excessive utilization; participate in the renegotiation of telecommunications contracts; and encourage the use of technology and take other actions necessary to provide the greatest value to the state.

§5A-6-4a. Duties of the Chief Technology Officer relating to security of government information.

(a) To ensure the security of state government information and the data communications infrastructure from unauthorized uses, intrusions or other security threats. At a minimum, these policies, procedures and standards shall identify and require the adoption of practices to safeguard information systems, data and communications infrastructures, as well as define the scope and regularity of security audits and which bodies are authorized to conduct security audits. The audits may include reviews of physical security practices.
(b) (1) The Chief Technology Officer shall at least annually perform security audits of all executive branch agencies regarding the protection of government databases and data communications.

(2) Security audits may include, but are not limited to, on-site audits as well as reviews of all written security procedures and documented practices.

c) The Chief Technology Officer may contract with a private firm or firms that specialize in conducting these audits.

d) All public bodies subject to the audits required by this section shall fully cooperate with the entity designated to perform the audit.

e) The Chief Technology Officer may direct specific remediation actions to mitigate findings of insufficient administrative, technical and physical controls necessary to protect state government information or data communication infrastructures.

(f) The Chief Technology Officer shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to minimize vulnerability to threats and to regularly assess security risks, determine appropriate security measures and perform security audits of government information systems and data communications infrastructures.

(g) To ensure compliance with confidentiality restrictions and other security guidelines applicable to state law-enforcement agencies, emergency response personnel and emergency management operations, the provisions of this section may not apply to the West Virginia State Police or the Division of Homeland Security and Emergency Management.
(h) The provisions of this section shall not infringe upon the responsibilities assigned to the State Comptroller, the Auditor or the Legislative Auditor, or other statutory requirements.

(i) In consultation with the Adjutant General, Chairman of the Public Service Commission, the Superintendent of the State Police and the Director of the Division of Homeland Security and Emergency Management, the Chief Technology Officer is responsible for the development and maintenance of an information systems disaster recovery system for the State of West Virginia with redundant sites in two or more locations isolated from reasonably perceived threats to the primary operation of state government. The Chief Technology Officer shall develop specifications, funding mechanisms and participation requirements for all executive branch agencies to protect the state's essential data, information systems and critical government services in times of emergency, inoperativeness or disaster. Each executive branch agency shall assist the Chief Technology Officer in planning for its specific needs and provide to the Chief Technology Officer any information or access to information systems or equipment that may be required in carrying out this purpose. No statewide or executive branch agency procurement of disaster recovery services may be initiated, let or extended without the expressed consent of the Chief Technology Officer.

§5A-6-4b. Project management duties of the Chief Technology Officer; establishment of the Project Management Office and duties of the director of the Project Management Office.

(a) Concerning the management of information technology projects, the Chief Technology Officer shall:

(1) Develop an approval process for proposed major information technology projects by state agencies to ensure that
all projects conform to the statewide strategic plan and the information management plans of agencies;

(2) Establish a methodology for conceiving, planning, scheduling and providing appropriate oversight for information technology projects, including oversight for the projects and a process for approving the planning, development and procurement of information technology projects;

(3) Establish minimum qualifications and training standards for project managers;

(4) Direct the development of any statewide and multiagency enterprise project; and

(5) Develop and update a project management methodology to be used by agencies in the development of information technology.

(b) The Chief Technology Officer shall create a Project Management Office within the Office of Technology.

(c) The Director of the Project Management Office shall:

(1) Implement the approval process for information technology projects;

(2) Assist the Chief Technology Officer in the development and implementation of a project management methodology to be used in the development and implementation of information technology projects in accordance with this article;

(3) Provide ongoing assistance and support to state agencies and public institutions of higher education in the development of information technology projects;

(4) Establish a program providing training to agency project managers;
(5) Review information management and information technology plans submitted by agencies and recommend to the Chief Technology Officer the approval of the plans and any amendments thereto;

(6) Monitor the implementation of information management and information technology plans and periodically report its findings to the Chief Technology Officer;

(7) Assign project managers to review and recommend information technology project proposals.

(8) The director shall create criteria upon which information technology project proposal plans may be based including:

(A) The degree to which the project is consistent with the state's overall strategic plan;

(B) The technical feasibility of the project;

(C) The benefits of the project to the state, including customer service improvements;

(D) The risks associated with the project;

(E) Any continued funding requirements; and

(F) The past performance on other projects by the agency.

(9) Provide oversight for state agency information technology projects.

§5A-6-4c. Major information technology projects proposals and the establishment of steering committees.

(a) Prior to proceeding with a major information technology project, an agency shall submit a project proposal, outlining the business need for the project, the proposed technology solution,
if known, and an explanation of how the project will support the agency’s business objective and the state’s strategic plan for information technology. The project manager may require the submission of additional information as needed to adequately review any proposal.

(b) The proposal will further include:

(1) A detailed business case plan, including a cost-benefit analysis;

(2) A business process analysis, if applicable;

(3) System requirements, if known;

(4) A proposed development plan and project management structure;

(5) Business goals and measurement criteria, as appropriate; and

(6) A proposed resource or funding plan.

(c) The project manager assigned to review the project development proposal shall recommend its approval or rejection to the Chief Technology Officer. If the Chief Technology Officer approves the proposal, then he or she shall notify the agency of its approval.

(d) Whenever an agency has received approval from the Chief Technology Officer to proceed with the development and acquisition of a major information technology project, the Chief Technology Officer shall establish a steering committee.

(e) The steering committee shall provide ongoing oversight for the major information technology project and have the authority to approve or reject any changes to the project’s scope, schedule or budget.
(f) The Chief Technology Officer shall ensure that the major information technology project has in place adequate project management and oversight structures for addressing the project’s scope, schedule or budget and shall address issues that cannot be resolved by the steering committee.

§5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.

Any state spending unit that pursues an information technology purchase that does not meet the definition of a “major technology project” and that is required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall obtain the approval of the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information technology and telecommunication systems. The notice shall contain a brief description of the goods and services to be purchased. The state spending unit shall provide the notice to the Chief Technology Officer prior to the time it submits its request for proposal to the State Purchasing Division.

§5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.

(a) Any state spending unit that is not required to submit a request for proposal to the State Purchasing Division prior to purchasing goods or services shall notify the Chief Technology Officer, in writing, of any proposed purchase of goods or services related to its information technology or telecommunication systems. The notice shall contain a detailed description of the goods and services to be purchased. The state spending unit shall provide the notice to the Chief Technology Officer a minimum of ten days prior to the time it requests bids on the provision of the goods or services.
If the Chief Technology Officer evaluates the suitability of the information technology and telecommunication equipment and related services under the provisions of subdivision (3), subsection (a), section four of this article and determines that the goods or services to be purchased are not suitable, he or she shall, within ten days of receiving the notice from the state spending unit, notify the state spending unit, in writing, of any recommendations he or she has regarding the proposed purchase of the goods or services. If the state spending unit receives a written notice from the Chief Technology Officer within the time period required by this section, the state spending unit shall not put the goods or services out for bid less than fifteen days following receipt of the notice from the Chief Technology Officer.

§5A-6-8. Exemptions.

(a) The provisions of this article do not apply to the Legislature, the judiciary or any state constitutional officer designated in section two, article seven, chapter six of this code.

(b) Notwithstanding any other provision of this article to the contrary, except for participation in the compilation and maintenance of an inventory of information technology and technical infrastructure of the state authorized by section four of this article, the provisions of this article do not apply to the West Virginia Board of Education, the West Virginia Department of Education or the county boards of education. However, the West Virginia Board of Education, the West Virginia Department of Education and the county boards of education will attempt to cooperate and collaborate with the Chief Technology Officer to the extent feasible.

(c) The Governor may by executive order exempt from the provisions of this article any entity created and organized to facilitate the public and private use of health care information and the use of electronic medical records throughout the state.
§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

(a) The division is responsible for providing technical services and assistance to the various state spending units with respect to developing and improving data processing and telecommunications functions. The division may provide training and direct data processing services to the various state agencies. The division shall, upon request of the Chief Technology Officer, provide technical assistance in evaluating the economic justification, system design and suitability of equipment and systems used in state government. The director shall report to the Chief Technology Officer.

(b) The director is responsible for the development of personnel to carry out the technical work of the division and may approve reimbursement of costs incurred by employees to obtain education and training.

(c) The director may assess each state spending unit for the cost of any evaluation of the economic justification, system design and suitability of equipment and systems used by the state spending unit or any other technical assistance that is provided or performed by the Chief Technology Officer and the division under the provisions of section four, article six of this chapter.

(d) The director shall transfer any moneys received as a result of the assessments that he or she makes under subsection (c) of this section to the Office of Technology. The director shall report quarterly to the Joint Committee on Government and Finance on all assessments made pursuant to subsection (c) of this section.
(e) The director shall maintain an accounting system for all telephone service to the state.

(f) The provisions of this article do not apply to the Legislature or the judiciary.

CHAPTER 244

(H. B. 4116 — By Delegates Hamilton, Beach, Stevens, Evans, Ellem, Poling, Talbott and Schadler)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of timber that can be sold on state Wildlife Management Areas, without sealed bids, from five hundred dollars to five thousand dollars.

Be it enacted by the Legislature of West Virginia:

That §20-1-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director is hereby authorized and empowered to:
(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the "Division of Natural Resources” any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals;

(3) Conduct research in improved conservation methods and disseminate information matters to the residents of the state;

(4) Conduct a continuous study and investigation of the habits of wildlife, and for purposes of control and protection, to classify by regulation the various species into such categories as may be established as necessary;

(5) Prescribe the locality in which the manner and method by which the various species of wildlife may be taken, or chased, unless otherwise specified by this chapter;

(6) Hold at least six meetings each year at such time and at such points within the state, as in the discretion of the Natural Resources Commission may appear to be necessary and proper for the purpose of giving interested persons in the various sections of the state an opportunity to be heard concerning open season for their respective areas, and report the results of the meetings to the Natural Resources Commission before such season and bag limits are fixed by it;

(7) Suspend open hunting season upon any or all wildlife in any or all counties of the state with the prior approval of the
Governor in case of an emergency such as a drought, forest fire hazard or epizootic disease among wildlife. The suspension shall continue during the existence of the emergency and until rescinded by the director. Suspension, or reopening after such suspension, of open seasons may be made upon twenty-four hours’ notice by delivery of a copy of the order of suspension or reopening to the wire press agencies at the State Capitol;

(8) Supervise the fiscal affairs and responsibilities of the division;

(9) Designate such localities as he or she shall determine to be necessary and desirable for the perpetuation of any species of wildlife;

(10) Enter private lands to make surveys or inspections for conservation purposes, to investigate for violations of provisions of this chapter, to serve and execute warrants and processes, to make arrests and to otherwise effectively enforce the provisions of this chapter;

(11) Acquire for the state in the name of the “Division of Natural Resources” by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the Division of Natural Resources, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, including lands and waters, which he or she deems suitable for the following purposes:

(a) For state forests for the purpose of growing timber, demonstrating forestry, furnishing or protecting watersheds or providing public recreation;

(b) For state parks or recreation areas for the purpose of preserving scenic, aesthetic, scientific, cultural, archaeological or historical values or natural wonders, or providing public recreation;
(c) For public hunting, trapping or fishing grounds or waters for the purpose of providing areas in which the public may hunt, trap or fish, as permitted by the provisions of this chapter, and the rules issued hereunder;

(d) For fish hatcheries, game farms, wildlife research areas and feeding stations;

(e) For the extension and consolidation of lands or waters suitable for the above purposes by exchange of other lands or waters under his or her supervision;

(f) For such other purposes as may be necessary to carry out the provisions of this chapter;

(12) Capture, propagate, transport, sell or exchange any species of wildlife as may be necessary to carry out the provisions of this chapter;

(13) Sell timber for not less than the value thereof, as appraised by a qualified appraiser appointed by the director, from all lands under the jurisdiction and control of the director, except those lands that are designated as state parks and those in the Kanawha State Forest. The appraisal shall be made within a reasonable time prior to any sale, reduced to writing, filed in the office of the director and shall be available for public inspection. The director must obtain the written permission of the Governor to sell timber when the appraised value is more than five thousand dollars. The director shall receive sealed bids therefor, after notice by publication 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 each county in which the timber is located. The timber so advertised shall be sold at not less than the appraised value to the highest responsible bidder, who shall give bond for the proper performance of the sales contract as the director shall designate; but the director shall have the right
to reject any and all bids and to readvertise for bids. If the
foregoing provisions of this section have been complied with,
and no bid equal to or in excess of the appraised value of the
timber is received, the director may, at any time, during a
period of six months after the opening of the bids, sell the
timber in such manner as he or she deems appropriate, but the
sale price shall not be less than the appraised value of the
timber advertised. No contract for sale of timber made pursuant
to this section shall extend for a period of more than ten years.
And all contracts heretofore entered into by the state for the sale
of timber shall not be validated by this section if the same be
otherwise invalid. The proceeds arising from the sale of the
timber so sold, shall be paid to the Treasurer of the State of
West Virginia, and shall be credited to the division and used
exclusively for the purposes of this chapter: Provided, That
nothing contained herein shall prohibit the sale of timber which
otherwise would be removed from rights-of-way necessary for
and strictly incidental to the extraction of minerals;

(14) Sell or lease, with the approval in writing of the
Governor, coal, oil, gas, sand, gravel and any other minerals
that may be found in the lands under the jurisdiction and control
of the director, except those lands that are designated as state
parks. The director, before making sale or lease thereof, shall
receive sealed bids therefor, after notice by publication as a
Class II legal advertisement in compliance with the provisions
of article three, chapter fifty-nine of this code, and the publica-
tion area for such publication shall be each county in which
such lands are located. The minerals so advertised shall be sold
or leased to the highest responsible bidder, who shall give bond
for the proper performance of the sales contract or lease as the
director shall designate; but the director shall have the right to
reject any and all bids and to readvertise for bids. The proceeds
arising from any such sale or lease shall be paid to the Treasurer
of the State of West Virginia and shall be credited to the
division and used exclusively for the purposes of this chapter;
(15) Exercise the powers granted by this chapter for the protection of forests, and regulate fires and smoking in the woods or in their proximity at such times and in such localities as may be necessary to reduce the danger of forest fires;

(16) Cooperate with departments and agencies of state, local and federal governments in the conservation of natural resources and the beautification of the state;

(17) Report to the Governor each year all information relative to the operation and functions of the division and the director shall make such other reports and recommendations as may be required by the Governor, including an annual financial report covering all receipts and disbursements of the division for each fiscal year, and he or she shall deliver such report to the Governor on or before the first day of December next after the end of the fiscal year so covered. A copy of such report shall be delivered to each house of the Legislature when convened in January next following;

(18) Keep a complete and accurate record of all proceedings, record and file all bonds and contracts taken or entered into, and assume responsibility for the custody and preservation of all papers and documents pertaining to his or her office, except as otherwise provided by law;

(19) Offer and pay, in his or her discretion, rewards for information respecting the violation, or for the apprehension and conviction of any violators, of any of the provisions of this chapter;

(20) Require such reports as he or she may deem to be necessary from any person issued a license or permit under the provisions of this chapter, but no person shall be required to disclose secret processes or confidential data of competitive significance;
(21) Purchase as provided by law all equipment necessary for the conduct of the division;

(22) Conduct and encourage research designed to further new and more extensive uses of the natural resources of this state and to publicize the findings of such research;

(23) Encourage and cooperate with other public and private organizations or groups in their efforts to publicize the attractions of the state;

(24) Accept and expend, without the necessity of appropriation by the Legislature, any gift or grant of money made to the division for any and all purposes specified in this chapter, and he or she shall account for and report on all such receipts and expenditures to the Governor;

(25) Cooperate with the state historian and other appropriate state agencies in conducting research with reference to the establishment of state parks and monuments of historic, scenic and recreational value, and to take such steps as may be necessary in establishing such monuments or parks as he or she deems advisable;

(26) Maintain in his or her office at all times, properly indexed by subject matter, and also, in chronological sequence, all rules made or issued under the authority of this chapter. Such records shall be available for public inspection on all business days during the business hours of working days;

(27) Delegate the powers and duties of his or her office, except the power to execute contracts, to appointees and employees of the division, who shall act under the direction and supervision of the director and for whose acts he or she shall be responsible;

(28) Conduct schools, institutions and other educational programs, apart from or in cooperation with other governmental
agencies, for instruction and training in all phases of the natural resources programs of the state;

(29) Authorize the payment of all or any part of the reasonable expenses incurred by an employee of the division in moving his or her household furniture and effects as a result of a reassignment of the employee: Provided, That no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months; and

(30) Promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement and make effective the powers and duties vested in him or her by the provisions of this chapter and take such other steps as may be necessary in his or her discretion for the proper and effective enforcement of the provisions of this chapter.

CHAPTER 245

(S. B. 722 — By Senator Caruth)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §38-1-4a, relating to providing a statute of limitations for sales by a trustee.

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 §38-1-4a, to read as follows:
ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.

§38-1-4a. Statute of limitations for sales by trustees.

1 Provided the grantor on the deed of trust or the agent or personal representative of the grantor is provided notice as required by section four of this article, no action or proceeding to set aside a trustee’s sale due to the failure to follow any notice, service, process or other procedural requirement relating to a sale of property under a trust deed shall be filed or commenced more than one year from the date of the sale.

CHAPTER 246

(H. B. 4458 — By Delegates Amores, Armstead, Morgan, Ellem and Schadler)

[Passed March 9, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend and reenact §11-12C-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46-9-523 of said code, all relating to the sale of bulk data in electronic format from the Uniform Commercial Code and Corporation Data Bases electronically stored in the Secretary of State’s Office.

Be it enacted by the Legislature of West Virginia:

That §11-12C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46-9-523 be amended and reenacted, all to read as follows:
ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. — When application is made to the Secretary of State for a certificate of incorporation or authority to do business in this state, the applicant shall pay all taxes and fees due under this article; and the Secretary of State shall collect the corporate license tax for the first year before issuing the certificate. Thereafter, on or before the first day of the license tax year next following the date of the certificate, and on or before the first day of each succeeding license tax year, the corporation shall pay and the Tax Commissioner shall collect the tax for a full license tax year together with the statutory attorney fee:Provided, That if the application is made on or after the first day of the second month preceding the beginning of the next license tax year, and before the first day of the license tax year, the Secretary of State shall collect the tax for the full year beginning on the first day of the next license tax year in addition to the initial tax, together with the statutory attorney fee.

(b) Deposit of money. — The first year license tax received by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the services fees and collections account established by section two, article one, chapter fifty-nine of this code. The license tax received by the Tax Commissioner every year after the initial registration shall be deposited into the state general revenue fund.
27 (c) *Returns.* — Payment of the tax and statutory attorney
28 fee required under the provisions of this section shall be
29 accompanied by a return on forms provided by the tax commis-
30 sioner for that purpose. The Tax Commissioner shall upon
31 completion of processing the return, forward it to the Secretary
32 of State, together with a list of all corporations which have paid
33 the tax. The return shall contain: (1) The address of the
34 corporation’s principal office; (2) the names and mailing
35 addresses of its officers and directors; (3) the name and mailing
36 address of the person on whom notice of process may be
37 served; (4) the name and address of the corporation’s parent
38 corporation and of each subsidiary of the corporation licensed
39 to do business in this state; (5) the county or county code in
40 which the principal office address or mailing address of the
41 company is located in; (6) business class code; and (7) any
42 other information the Tax Commissioner considers appropriate.
43 Notwithstanding any other provision of law to the contrary, the
44 Secretary of State shall, upon request of any person, disclose:
45 (A) The address of the corporation’s principal office; (B) the
46 names and addresses of its officers and directors; (C) the name
47 and mailing address of the person on whom notice of process
48 may be served; (D) the name and address of each subsidiary of
49 the corporation and the corporation’s parent corporation; (E) the
50 county or county code in which the principal office address or
51 mailing address of the company is located; and (F) the business
52 class code.
53
54 (d) *Purchase of data.* — The Secretary of State will provide
55 electronically, for purchase, any data maintained in the
56 Secretary of State’s Business Organizations Database. For the
57 electronic purchase of the entire Business Organizations
58 Database, the cost is twelve thousand dollars and for the
59 electronic purchase of the monthly updates of the Business
60 Organizations Database the cost is one thousand dollars.

**CHAPTER 46. UNIFORM COMMERCIAL CODE.**
§46-9-523. Information from filing office; sale or license of records.

(a) Acknowledgment of filing written record. — If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) Acknowledgment of filing other record. — If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) Communication of requested information. — The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:
(A) Designates a particular debtor;

(B) Has not lapsed under section 9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) Medium for communicating information. — In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) Timeliness of filing office performance. — The filing office shall perform the acts required by subsections (a) through (d), inclusive, of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) Public availability of records. — At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State’s UCC Bulk Sale Database. The cost for purchase of the UCC Bulk Database in the electronic medium shall be as follows:

(1) The entire UCC Bulk Sale Database - twelve thousand, three hundred sixty dollars;
(2) The weekly updates of the UCC Bulk Sale Database -
two hundred fifty eight dollars, and

(3) The weekly updates of the UCC Bulk Sale Database in
monthly form — one thousand thirty dollars.

CHAPTER 247

(Com. Sub. for S. B. 742 — By Senators Jenkins, Dempsey,
Minard, Unger, Caruth, Harrison and Yoder)

[Passed March 10, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to repeal §46-1-109, §46-1-207 and §46-1-208 of the Code
of West Virginia, 1931, as amended; to repeal §46-2-208 of said
code; to repeal §46-2A-207 of said code; to amend and reenact
§46-1-101, §46-1-102, §46-1-103, §46-1-104, §46-1-105,
§46-1-106, §46-1-107, §46-1-108, §46-1-201, §46-1-202,
§46-1-203, §46-1-204, §46-1-205 and §46-1-206 of said code; to
amend said code by adding thereto ten new sections, designated
§46-1-301, §46-1-302, §46-1-303, §46-1-304, §46-1-305,
§46-1-306, §46-1-307, §46-1-308, §46-1-309 and §46-1-310; to
amend and reenact §46-2-103, §46-2-104, §46-2-202, §46-2-310,
§46-2-323, §46-2-401, §46-2-503, §46-2-505, §46-2-506, §46-2-509,
§46-2-605 and §46-2-705 of said code; to amend and reenact
§46-2A-526, §46-2A-527 and §46-2A-528 of said code; to
amend and reenact §46-3-103 of said code; to amend and reenact
§46-4-104 and §46-4-210 of said code; to amend and reenact §46-
4A-105, §46-4A-106 and §46-4A-204 of said code; to amend and
reenact §46-5-103 of said code; to amend and reenact §46-7-101,
§46-7-102, §46-7-103, §46-7-104, §46-7-105, §46-7-201, §46-7-202, §46-7-203, §46-7-204, §46-7-205, §46-7-206, §46-7-207, §46-7-208, §46-7-209, §46-7-210, §46-7-301, §46-7-302, §46-7-303, §46-7-304, §46-7-305, §46-7-306, §46-7-307, §46-7-308, §46-7-309, §46-7-401, §46-7-402, §46-7-403, §46-7-404, §46-7-501, §46-7-502, §46-7-503, §46-7-504, §46-7-505, §46-7-506, §46-7-507, §46-7-508, §46-7-509, §46-7-601, §46-7-602 and §46-7-603 of said code; to amend said code by adding thereto three new sections, designated §46-7-106, §46-7-701 and §46-7-702; to amend and reenact §46-8-102 and §46-8-103 of said code; to amend and reenact §46-9-102, §46-9-203, §46-9-207, §46-9-208, §46-9-301, §46-9-310, §46-9-312, §46-9-313, §46-9-314, §46-9-317, §46-9-338, §46-9-516 and §46-9-601 of said code, all relating to revising the Uniform Commercial Code, articles one and seven; making conforming amendments to other articles; and authorizing administrative review by secretary of state of certain filings in connection with secured transactions.

Be it enacted by the Legislature of West Virginia:

Article
2. Sales.
2A. Leases.
4. Bank Deposits and Collections.
4A. Fund Transfers.
5. Letters of Credit.
7. Warehouse Receipts, Bill of Lading and Other Documents of Title.
8. Investment Securities.

ARTICLE 1. GENERAL PROVISIONS.

PART 1. GENERAL PROVISIONS.

§46-1-101. Short titles.
§46-1-102. Scope of article.
§46-1-103. Construction of uniform commercial code to promote its purposes and policies; applicability of supplemental principles of law.
§46-1-104. Construction against implied repeal.
§46-1-105. Severability.
§46-1-106. Use of singular and plural; gender.
§46-1-107. Section captions.
§46-1-108. Relation to electronic signatures in global and national commerce act.
§46-1-201. General definitions.
§46-1-203. Lease distinguished from security interest.
§46-1-204. Value.
§46-1-205. Reasonable time; seasonableness.
§46-1-206. Presumptions.
§46-1-301. Territorial applicability; parties’ power to choose applicable law.
§46-1-302. Variation by agreement.
§46-1-303. Course of performance, course of dealing, and usage of trade.
§46-1-304. Obligation of good faith.
§46-1-305. Remedies to be liberally administered.
§46-1-306. Waiver or renunciation of claim or right after breach.
§46-1-308. Performance or acceptance under reservation of rights.
§46-1-309. Option to accelerate at will.
§46-1-310. Subordinated obligations.

§46-1-101. Short titles.

1 (a) This chapter may be cited as the Uniform Commercial Code.
2
3 (b) This article may be cited as Uniform Commercial Code – General Provisions.

§46-1-102. Scope of article.

1 This article applies to a transaction to the extent that it is
governed by another article of this chapter.

§46-1-103. Construction of uniform commercial code to promote
its purposes and policies; applicability of supplemental principles of law.

1 (a) This chapter must be liberally construed and applied to
promote its underlying purposes and policies, which are:

3 (1) To simplify, clarify and modernize the law governing
commercial transactions;
(2) To permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) To make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy and other validating or invalidating cause supplement its provisions.

§46-1-104. Construction against implied repeal.

The Uniform Commercial Code being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

§46-1-105. Severability.

If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§46-1-106. Use of singular and plural; gender.

In this chapter, unless the statutory context otherwise requires:

(1) Words in the singular number include the plural, and those in the plural include the singular; and
§46-1-107. Section captions.

Section captions are part of this chapter.

§46-1-108. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits and 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(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 103(b)).

PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.

§46-1-201. General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this chapter that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this chapter that apply to particular articles or parts thereof:

(1) “Action”, in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity and any other proceeding in which rights are determined.

(2) “Aggrieved party” means a party entitled to pursue a remedy.
(3) “Agreement”, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 1-303.

(4) “Bank” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) “Bearer” means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, document of title or certificated security that is payable to bearer or indorsed in blank.

(6) “Bill of lading” means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) “Branch” includes a separately incorporated foreign branch of a bank.

(8) “Burden of establishing” a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) “Buyer in ordinary course of business” means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas or other minerals at the wellhead or minehead is a person in the business of selling
goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under article 2 may be a buyer in ordinary course of business. “Buyer in ordinary course of business” does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) “Conspicuous”, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is “conspicuous” or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) “Consumer” means an individual who enters into a transaction primarily for personal, family or household purposes.

(12) “Contract”, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this chapter as supplemented by any other applicable laws.

(13) “Creditor” includes a general creditor, a secured creditor, a lien creditor and any representative of creditors,
including an assignee for the benefit of creditors, a trustee in
bankruptcy, a receiver in equity, and an executor or administra-
tor of an insolvent debtor’s or assignor’s estate.

(14) “Defendant” includes a person in the position of
defendant in a counterclaim, cross-claim or third-party claim.

(15) “Delivery”, with respect to an electronic document of
title means voluntary transfer of control and with respect to an
instrument, document of title or chattel paper, means voluntary
transfer of possession.

(16) “Document of title” means a record: (i) that in the
regular course of business or financing is treated as adequately
evidencing that the person in possession or control of the record
is entitled to receive, control, hold, and dispose of the record
and the goods the record covers and (ii) that purports to be
issued by or addressed to a bailee and to cover goods in the
bailee’s possession which are either identified or are fungible
portions of an identified mass. The term includes a bill of
lading, transport document, dock warrant, dock receipt,
warehouse receipt, and order for delivery of goods. An
electronic document of title means a document of title evi-
denced by a record consisting of information stored in an
electronic medium. A tangible document of title means a
document of title evidenced by a record consisting of informa-
tion that is inscribed on a tangible medium.

(17) “Fault” means a default, breach or wrongful act or
omission.

(18) “Fungible goods” means:

(A) Goods of which any unit, by nature or usage of trade,
is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.
(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith", except as otherwise provided in article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession; or

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of the negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.
(25) "Organization" means a person other than an individual.

(26) "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this chapter.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "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.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.
(33) “Representative” means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate.

(34) “Right” includes remedy.

(35) “Security interest” means an interest in personal property or fixtures which secures payment or performance of an obligation. “Security interest” includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible or a promissory note in a transaction that is subject to article 9. “Security interest” does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 2-401, but a buyer may also acquire a “security interest” by complying with article 9. Except as otherwise provided in section 2-505, the right of a seller or lessor of goods under article 2 or 2A to retain or acquire possession of the goods is not a “security interest”, but a seller or lessor may also acquire a “security interest” by complying with article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 2-401 is limited in effect to a reservation of a “security interest”. Whether a transaction in the form of a lease creates a “security interest” is determined pursuant to section 1-203.

(36) “Send” in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.
“Signed” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

“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.

“Surety” includes a guarantor or other secondary obligor.

“Term” means a portion of an agreement that relates to a particular matter.

“Unauthorized signature” means a signature made without actual, implied or apparent authority. The term includes a forgery.

“Warehouse receipt” means a document of title issued by a person engaged in the business of storing goods for hire.

“Writing” includes printing, typewriting, or any other intentional reduction to tangible form. “Written” has a corresponding meaning.


(a) Subject to subsection (f), a person has “notice” of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) “Knowledge” means actual knowledge. “Knows” has a corresponding meaning.
(c) “Discover”, “learn”, or words of similar import refer to knowledge rather than to reason to know.

(d) A person “notifies” or “gives” a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to subsection (f), a person “receives” a notice or notification when:

(1) It comes to that person’s attention; or

(2) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

§46-1-203. Lease distinguished from security interest.

(a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.
(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

(4) The lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) The lessee assumes risk of loss of the goods;

(3) The lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) The lessee has an option to renew the lease or to become the owner of the goods;
(5) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee’s reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) When the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) When the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The “remaining economic life of the goods” and “reasonably predictable” fair market rent, fair market value or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

§46-1-204. Value.

Except as otherwise provided in articles 3, 4, and 5 of this chapter, a person gives value for rights if the person acquires them:
(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

§46-1-205. Reasonable time; seasonableness.

(a) Whether a time for taking an action required by this chapter is reasonable depends on the nature, purpose and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

§46-1-206. Presumptions.

Whenever this chapter creates a “presumption” with respect to a fact, or provides that a fact is “presumed”, the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES.

§46-1-301. Territorial applicability; parties’ power to choose applicable law.

(a) Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to
another state or nation the parties may agree that the law either
of this state or of such other state or nation shall govern their
rights and duties.

(b) In the absence of an agreement effective under subsection (a), and except as provided in subsection (c), this chapter
applies to transactions bearing an appropriate relation to this
state.

(c) If one of the following provisions of this chapter
specifies the applicable law, that provision governs and a
contrary agreement is effective only to the extent permitted by
the law so specified:

(1) Section 2-402;
(2) Sections 2A-105 and 2A-106;
(3) Section 4-102;
(4) Section 4A-507;
(5) Section 5-116;
(6) Section 8-110;
(7) Sections 9-301 through 9-307.

§46-1-302. Variation by agreement.

(a) Except as otherwise provided in subsection (b) or
elsewhere in this chapter, the effect of provisions of this chapter
may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness,
and care prescribed by this chapter may not be disclaimed by
agreement. The parties, by agreement, may determine the
standards by which the performance of those obligations is to
be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this chapter of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

§46-1-303. Course of performance, course of dealing, and usage of trade.

(a) A “course of performance” is a sequence of conduct between the parties to a particular transaction that exists if:

(1) The agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) The other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A “course of dealing” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A “usage of trade” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.
(d) A course of performance or course of dealing between
the parties or usage of trade in the vocation or trade in which
they are engaged or of which they are or should be aware is
relevant in ascertaining the meaning of the parties’ agreement,
may give particular meaning to specific terms of the agreement,
and may supplement or qualify the terms of the agreement. A
usage of trade applicable in the place in which part of the
performance under the agreement is to occur may be so utilized
as to that part of the performance.

(e) Except as otherwise provided in subsection (f), the
express terms of an agreement and any applicable course of
performance, course of dealing, or usage of trade must be
construed whenever reasonable as consistent with each other.
If such a construction is unreasonable:

(1) Express terms prevail over course of performance,
course of dealing, and usage of trade;

(2) Course of performance prevails over course of dealing
and usage of trade; and

(3) Course of dealing prevails over usage of trade.

(f) Subject to section 2-209, a course of performance is
relevant to show a waiver or modification of any term inconsis-
tent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one
party is not admissible unless that party has given the other
party notice that the court finds sufficient to prevent unfair
surprise to the other party.

§46-1-304. Obligation of good faith.

Every contract or duty within this chapter imposes an
obligation of good faith in its performance and enforcement.
§46-1-305. Remedies to be liberally administered.

(a) The remedies provided by this chapter must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

(b) Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

§46-1-306. Waiver or renunciation of claim or right after breach.

A claim or right arising out of an alleged breach may be discharged, in whole or in part, without consideration by agreement of the aggrieved party in an authenticated record.


A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher’s or inspector’s certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

§46-1-308. Performance or acceptance under reservation of rights.

(a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest”, or the like are sufficient.
(b) Subsection (a) does not apply to an accord and satisfaction.

§46-1-309. Option to accelerate at will.

A term providing that one party or that party’s successor in interest may accelerate payment or performance or require collateral or additional collateral “at will” or when the party “deems itself insecure”, or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

§46-1-310. Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

ARTICLE 2. SALES.

PART 1. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER.

§46-2-103. Definitions and index of definitions.
§46-2-104. Definitions: “merchant”; “between merchants”; “financing agency”.
§46-2-310. Open time for payment or running of credit; authority to ship under reservation.
§46-2-323. Form of bill of lading required in overseas shipment, “overseas”.
§46-2-401. Passing of title; reservation for security; limited application of this section.
§46-2-503. Manner of seller’s tender of delivery.
§46-2-505. Seller’s shipment under reservation.
§46-2-103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) “Buyer” means a person who buys or contracts to buy goods.

4 (b) [Reserved.]

5 (c) “Receipt” of goods means taking physical possession of them.

7 (d) “Seller” means a person who sells or contracts to sell goods.

9 (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

11 “Acceptance”. Section 2-606.
12 “Banker’s credit”. Section 2-325.
13 “Between merchants”. Section 2-104.
14 “Cancellation”. Section 2-106 (4).
15 “Commercial unit”. Section 2-105.
16 “Confirmed credit”. Section 2-325.
17 “Conforming to contract”. Section 2-106.
18 “Contract for sale”. Section 2-106.
19 “Cover”. Section 2-712.
20 “Entrusting”. Section 2-403.
21 “Financing agency”. Section 2-104.
22 “Future goods”. Section 2-105.
23 “Goods”. Section 2-105.
24 “Identification”. Section 2-501.
25 “Installment contract”. Section 2-612.
“Letter of credit”. Section 2-325.
“Lot”. Section 2-105.
“Merchant”. Section 2-104.
“Overseas”. Section 2-323.
“Person in position of seller”. Section 2-707.
“Present sale”. Section 2-106.
“Sale”. Section 2-106.
“Sale on approval”. Section 2-326.
“Sale or return”. Section 2-326.
“Termination”. Section 2-106.

(3) “Control” as provided in Section 7-106 and the following definitions in other articles of this chapter apply to this article:

“Check.” Section 3-104.
“Consignee.” Section 7-102.
“Consignor.” Section 7-102.
“Consumer goods.” Section 9-102.
“Dishonor.” Section 3-502.
“Draft.” Section 3-104.

(4) In addition article one of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-2-104. Definitions: “merchant”; “between merchants”; “financing agency”.

(1) “Merchant” means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his or her employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.
(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.


Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of performance, course of dealing, or usage of trade (section 1-303); and

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

§46-2-310. Open time for payment or running of credit; authority to ship under reservation.
Unless otherwise agreed:

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due regardless of where the goods are to be received: (i) at the time and place at which the buyer is to receive delivery of the tangible documents; or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or if none, the seller’s residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

§46-2-323. Form of bill of lading required in overseas shipment, “overseas”.

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may
demand tender of the full set; otherwise only one part of the bill
of lading need be tendered. Even if the agreement expressly
requires a full set:

(a) Due tender of a single part is acceptable within the
provisions of this article on cure of improper delivery (subsection (1) of section 2-508); and

(b) Even though the full set is demanded, if the documents
are sent from abroad the person tendering an incomplete set
may nevertheless require payment upon furnishing an indem-
nity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplat-
ing such shipment is "overseas" insofar as by usage of trade or
agreement it is subject to the commercial, financing or shipping
practices characteristic of international deep water commerce.

§46-2-401. Passing of title; reservation for security; limited
application of this section.

Each provision of this article with regard to the rights,
obligations and remedies of the seller, the buyer, purchasers or
other third parties applies irrespective of title to the goods
except where the provision refers to such title. Insofar as
situations are not covered by the other provisions of this article
and matters concerning title become material the following
rules apply:

(1) Title to goods cannot pass under a contract for sale prior
to their identification to the contract (section 2-501), and unless
otherwise explicitly agreed the buyer acquires by their identifi-
cation a special property as limited by this chapter. Any
retention or reservation by the seller of the title (property) in
goods shipped or delivered to the buyer is limited in effect to a
reservation of a security interest. Subject to these provisions
and to the provisions of the article on secured transactions
(article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading.

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods;

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such recessing occurs by operation of law and is not a “sale”.
§46-2-503. Manner of seller's tender of delivery.

1. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer’s disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular.

   a. Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

   b. Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

2. (2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

3. (3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

4. (4) Where goods are in the possession of a bailee and are to be delivered without being moved.

   a. Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer’s right to possession of the goods; but

   b. Tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer’s rights fixes those rights as against the bailee and all
third persons; but risk of loss of the goods and of any failure by
the bailee to honor the nonnegotiable document of title or to
obey the direction remains on the seller until the buyer has had
a reasonable time to present the document or direction, and a
refusal by the bailee to honor the document or obey the
direction defeats the tender.

(5) Where the contract requires the seller to deliver
documents.

(a) He must tender all such documents in correct form,
except as provided in this article with respect to bills of lading
in a set (subsection (2) of section 2-323); and

(b) Tender through customary banking channels is suffi-
cient and dishonor of a draft accompanying or associated with
the documents constitutes nonacceptance or rejection.

§46-2-505. Seller’s shipment under reservation.

(1) Where the seller has identified goods to the contract by
or before shipment:

(a) His procurement of a negotiable bill of lading to his own
order or otherwise reserves in him a security interest in the
goods. His procurement of the bill to the order of a financing
agency or of the buyer indicates in addition only the seller’s
expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or his nominee
reserves possession of the goods as security but except in a case
of conditional delivery (subsection (2) of section 2-507) a
nonnegotiable bill of lading naming the buyer as consignee
reserves no security interest even though the seller retains
possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a
security interest is in violation of the contract for sale it
constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller’s powers as a holder of a negotiable document of title.

§46-2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper’s right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.


(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2-505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.
(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer.

(a) On his receipt of possession or control of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer’s right to possession of the goods; or

(c) After his receipt of possession or control a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4) (b) of section 2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 2-327) and on effect of breach on risk of loss (section 2-510).

§46-2-605. Waiver of buyer’s objections by failure to particularize.

(1) The buyer’s failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.
(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

§46-2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.
(d) A carrier who has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

ARTICLE 2A. LEASES.

PART 1. GENERAL PROVISIONS.

§46-2A–103. Definitions and index of definitions.
§46-2A–514. Waiver of lessee’s objections.
§46-2A–518. Cover; substitute goods.
§46-2A–519. Lessee’s damages for non-delivery, repudiation, default, and breach of warranty in regard to accepted goods.
§46-2A–526. Lessor’s stoppage of delivery in transit or otherwise.
§46-2A–527. Lessor’s rights to dispose of goods.
§46-2A–528. Lessor’s damages for non-acceptance, failure to pay, repudiation, or other default.

§46-2A–103. Definitions and index of definitions.

1 (1) In this article unless the context otherwise requires:

2 (a) “Buyer in ordinary course of business” means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “Buying” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

3 (b) “Cancellation” occurs when either party puts an end to the lease contract for default by the other party.

4 (c) “Commercial unit” means such a unit of goods as by commercial usage is a single whole for purposes of lease and
division of which materially impairs its character or value on
the market or in use. A commercial unit may be a single article,
as a machine, or a set of articles, as a suite of furniture or a line
of machinery, or a quantity, as a gross or carload, or any other
unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease
contract means goods or performance that are in accordance
with the obligations under the lease contract.

(e) "Consumer lease" shall have the same meaning as that
ascribed to it in section one hundred two, article one, chapter
forty-six-a of this code.

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture or supply the
goods;

(ii) The lessor acquires the goods or the right to possession
and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the
lessor acquired the goods or the right to possession and use of
the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the
lessor acquired the goods or the right to possession and use of
the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives
an accurate and complete statement designating the promises
and warranties, and any disclaimers of warranties, limitations
or modifications of remedies, or liquidated damages, including
those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing:
(a) Of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person; (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) “Goods” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) “Installment lease contract” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

(j) “Lease” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or
creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) “Lease agreement” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) “Lease contract” means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) “Leasehold interest” means the interest of the lessor or the lessee under a lease contract.

(n) “Lessee” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) “Lessee in ordinary course of business” means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “Leasing” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) “Lessor” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.
(q) “Lessor’s residual interest” means the lessor’s interest in the goods after expiration, termination or cancellation of the lease contract.

(r) “Lien” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) “Lot” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) “Merchant lessee” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) “Present value” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) “Purchase” includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) “Sublease” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) “Supplier” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) “Supply contract” means a contract under which a lessor buys or leases goods to be leased.
"Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Accessions&quot;</td>
<td>2A-310(1)</td>
</tr>
<tr>
<td>&quot;Construction mortgage&quot;</td>
<td>2A-309(1)(d)</td>
</tr>
<tr>
<td>&quot;Encumbrance&quot;</td>
<td>2A-309(1)(e)</td>
</tr>
<tr>
<td>&quot;Fixtures&quot;</td>
<td>2A-309(1)(a)</td>
</tr>
<tr>
<td>&quot;Fixture filing&quot;</td>
<td>2A-309(1)(b)</td>
</tr>
<tr>
<td>&quot;Purchase money lease&quot;</td>
<td>2A-309(1)(c)</td>
</tr>
</tbody>
</table>

(3) The following definitions in other articles apply to this article:

<table>
<thead>
<tr>
<th>Definition</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Account&quot;</td>
<td>9-102(a)(2)</td>
</tr>
<tr>
<td>&quot;Between merchants&quot;</td>
<td>2-104(3)</td>
</tr>
<tr>
<td>&quot;Buyer&quot;</td>
<td>2-103(1)(a)</td>
</tr>
<tr>
<td>&quot;Chattel paper&quot;</td>
<td>9-102(a)(11)</td>
</tr>
<tr>
<td>&quot;Consumer goods&quot;</td>
<td>9-102(a)(23)</td>
</tr>
<tr>
<td>&quot;Document&quot;</td>
<td>9-102(a)(30)</td>
</tr>
<tr>
<td>&quot;Entrusting&quot;</td>
<td>2-403(3)</td>
</tr>
<tr>
<td>&quot;General intangible&quot;</td>
<td>9-102(a)(42)</td>
</tr>
<tr>
<td>&quot;Instrument&quot;</td>
<td>9-102(a)(47)</td>
</tr>
<tr>
<td>&quot;Merchant&quot;</td>
<td>2-104(1)</td>
</tr>
<tr>
<td>&quot;Mortgage&quot;</td>
<td>9-102(a)(55)</td>
</tr>
<tr>
<td>&quot;Pursuant to commitment&quot;</td>
<td>9-102(a)(68)</td>
</tr>
<tr>
<td>&quot;Receipt&quot;</td>
<td>2-103(1)(c)</td>
</tr>
<tr>
<td>&quot;Sale&quot;</td>
<td>2-106(1)</td>
</tr>
<tr>
<td>&quot;Sale on approval&quot;</td>
<td>2-326</td>
</tr>
<tr>
<td>&quot;Sale or return&quot;</td>
<td>2-326</td>
</tr>
<tr>
<td>&quot;Seller&quot;</td>
<td>2-103(1)(d)</td>
</tr>
</tbody>
</table>

(4) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.
PART 5. DEFAULT.

A. IN GENERAL.


1 (1) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this article.

2 (2) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this article and, except as limited by this article, as provided in the lease agreement.

3 (3) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party’s claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this article.

4 (4) Except as otherwise provided in section 1-305(a) or this article or the lease agreement, the rights and remedies referred to in subsections (2) and (3) are cumulative.

5 (5) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party’s rights and remedies in respect of the real property, in which case this part does not apply.

§46-2A-514. Waiver of lessee’s objections.

1 (1) In rejecting goods, a lessee’s failure to state a particular defect that is ascertainable by reasonable inspection precludes
the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (section 2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee’s failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

§46-2A-518. Cover; substitute goods.

(1) After a default by a lessor under the lease contract of the type described in section 2A-508(1), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if a lessee’s cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages: (i) The present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement; and (ii) any incidental or conse-
quential damages, less expenses saved in consequence of the
lessee’s default.

(3) If a lessee’s cover is by lease agreement that for any
reason does not qualify for treatment under subsection (2), or is
by purchase or otherwise, the lessee may recover from the
lessor as if the lessee had elected not to cover and section 2A-519 governs.

§46-2A-519. Lessee’s damages for non-delivery, repudiation,
default, and breach of warranty in regard to
accepted goods.

(1) Except as otherwise provided with respect to damages
liquidated in the lease agreement (section 2A–504) or otherwise
determined pursuant to agreement of the parties (sections 1-302
and 2A–503), if a lessee elects not to cover or a lessee elects to
cover and the cover is by lease agreement that for any reason
does not qualify for treatment under section 2A–518(2), or is by
purchase or otherwise, the measure of damages for non-delivery
or repudiation by the lessor or for rejection or revocation of
acceptance by the lessee is the present value, as of the date of
the default, of the then market rent minus the present value as
of the same date of the original rent, computed for the remain-
ing lease term of the original lease agreement, together with
incidental and consequential damages, less expenses saved in
consequence of the lessor’s default.

(2) Market rent is to be determined as of the place for
tender or, in cases of rejection after arrival or revocation of
acceptance, as of the place of arrival.

(3) Except as otherwise agreed, if the lessee has accepted
goods and given notification (section 2A-516(3)), the measure
of damages for nonconforming tender or delivery or other
default by a lessor is the loss resulting in the ordinary course of
22 events from the lessor’s default as determined in any manner
23 that is reasonable together with incidental and consequential
damages, less expenses saved in consequence of the lessor’s
default.

26 (4) Except as otherwise agreed, the measure of damages for
breach of warranty is the present value at the time and place of
acceptance of the difference between the value of the use of the
goods accepted and the value if they had been as warranted for
the lease term, unless special circumstances show proximate
damages of a different amount, together with incidental and
consequential damages, less expenses saved in consequence of
the lessor’s default or breach of warranty.

§46-2A-526. Lessor’s stoppage of delivery in transit or otherwise.

1 (1) A lessor may stop delivery of goods in the possession
2 of a carrier or other bailee if the lessor discovers the lessee to
3 be insolvent and may stop delivery of carload, truckload,
4 planeload or larger shipments of express or freight if the lessee
5 repudiates or fails to make a payment due before delivery,
6 whether for rent, security or otherwise under the lease contract,
7 or for any other reason the lessor has a right to withhold or take
8 possession of the goods.

9 (2) In pursuing its remedies under subsection (1), the lessor
10 may stop delivery until:

11 (a) Receipt of the goods by the lessee;

12 (b) Acknowledgment to the lessee by any bailee of the
13 goods, except a carrier, that the bailee holds the goods for the
14 lessee; or

15 (c) Such an acknowledgment to the lessee by a carrier via
16 reshipment or as a warehouse.
(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

§46-2A-527. Lessor’s rights to dispose of goods.

1 (1) After a default by a lessee under the lease contract of the type described in section 2A-523(1) or 2A-523(3)(a) or after the lessee refuses to deliver or takes possession of goods (section 2A-525 or 2A-526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(2) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A-504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A-503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages: (i) Accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement; (ii) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement; and (iii) any incidental damages allowed under section 2A–530, less expenses saved in consequence of the lessee’s default.
(3) If the lessor’s disposition is by lease agreement that for any reason does not qualify for treatment under subsection (2), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 2A-528 governs.

(4) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this article.

(5) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee’s security interest (section 2A-508(5)).

§46-2A–528. Lessor’s damages for non-acceptance, failure to pay, repudiation, or other default.

(1) Except as otherwise provided with respect to damages liquidated in the lease agreement (section 2A–504) or otherwise determined pursuant to agreement of the parties (sections 1-302 and 2A–503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 2A–527(2), or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 2A–523(1) or 2A–523(3)(a), or, if agreed, for other default of the lessee: (i) Accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods
to the lessor; (ii) the present value as of the date determined under clause (I) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term; and (iii) any incidental damages allowed under section 2A-530, less expenses saved in consequence of the lessee's default.

(2) If the measure of damages provided in subsection (1) of this section is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 2A-530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

§46-3-103. Definitions.

(a) In this article:

(1) “Acceptor” means a drawee who has accepted a draft.

(2) “Drawee” means a person ordered in a draft to make payment.

(3) “Drawer” means a person who signs or is identified in a draft as a person ordering payment.

(4) [reserved]

(5) “Maker” means a person who signs or is identified in a note as a person undertaking to pay.

(6) “Order” means a written instruction to pay money signed by the person giving the instruction. The instruction may
be addressed to any person, including the person giving the
instruction, or to one or more persons jointly or in the alterna-
tive but not in succession. An authorization to pay is not an
order unless the person authorized to pay is also instructed to
pay.

(7) "Ordinary care" in the case of a person engaged in
business means observance of reasonable commercial stan-
dards, prevailing in the area in which the person is located, with
respect to the business in which the person is engaged. In the
case of a bank that takes an instrument for processing for
collection or payment by automated means, reasonable
commercial standards do not require the bank to examine the
instrument if the failure to examine does not violate the bank’s
prescribed procedures and the bank’s procedures do not vary
unreasonably from general banking usage not disapproved by
this article or article four.

(8) "Party" means a party to an instrument.

(9) "Promise" means a written undertaking to pay money
signed by the person undertaking to pay. An acknowledgment
of an obligation by the obligor is not a promise unless the
obligor also undertakes to pay the obligation.

(10) "Prove" with respect to a fact means to meet the
burden of establishing the fact (section 1–201(b)(8)).

(11) "Remitter" means a person who purchases an instru-
ment from its issuer if the instrument is payable to an identified
person other than the purchaser.

(b) Other definitions applying to this article and the sections
in which they appear are:

"Acceptance" Section 3-409.
"Accommodated party" Section 3-419.
“Accommodation party” Section 3-419.
“Alteration” Section 3-407.
“Anomalous indorsement” Section 3-205.
“Blank indorsement” Section 3-205.
“Cashier’s check” Section 3-104.
“Certificate of deposit” Section 3-104.
“Certified check” Section 3-409.
“Check” Section 3-104.
“Consideration” Section 3-303.
“Draft” Section 3-104.
“Holder in due course” Section 3-302.
“Incomplete instrument” Section 3-115.
“Indorsement” Section 3-204.
“Indorser” Section 3-204.
“Instrument” Section 3-104.
“Issue” Section 3-105.
“Issuer” Section 3-105.
“Negotiable instrument” Section 3-104.
“Negotiation” Section 3-201.
“Note” Section 3-104.
“Payable at a definite time” Section 3-108.
“Payable on demand” Section 3-108.
“Payable to bearer” Section 3-109.
“Payable to order” Section 3-109.
“Payment” Section 3-602.
“Person entitled to enforce” Section 3-301.
“Presentment” Section 3-501.
“Reacquisition” Section 3-207.
“Special indorsement” Section 3-205.
“Teller’s check” Section 3-104.
“Transfer of instrument” Section 3-203.
“Traveler’s check” Section 3-104.
“Value” Section 3-303.

(c) The following definitions in other articles apply to this article:
§46-4-104. Definitions and index of definitions.

1 (a) In this article unless the context otherwise requires:

2 (1) “Account” means any deposit or credit account with a
3 bank, including demand, time, savings, passbook, share draft,
4 or like account, other than an account evidenced by a certificate
5 of deposit;

6 (2) “Afternoon” means the period of a day between noon
7 and midnight;

8 (3) “Banking day” means the part of a day on which a bank
9 is open to the public for carrying on substantially all of its
10 banking functions;

11 (4) “Clearing house” means an association of banks or other
12 payors regularly clearing items;
(5) “Customer” means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) “Documentary draft” means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 8-102) or instructions for uncertificated securities (section 8-102), or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) “Draft” means a draft as defined in section 3-104 or an item, other than an instrument, that is an order;

(8) “Drawee” means a person ordered in a draft to make payment;

(9) “Item” means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by article four-a or a credit or debit card slip;

(10) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) “Settle” means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final;

(12) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.
(b) Other definitions applying to this article and the sections in which they appear are:

"Agreement for electronic presentment” Section 4-110.
"Bank” Section 4-105.
"Collecting bank” Section 4-105.
"Depositary bank” Section 4-105.
"Intermediary bank” Section 4-105.
"Payor bank” Section 4-105.
"Presenting bank” Section 4-105.
"Presentment notice” Section 4-110.

(c) “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

"Acceptance” Section 3-409.
"Alteration” Section 3-407.
"Cashier’s check” Section 3-104.
"Certificate of deposit” Section 3-104.
"Certified check” Section 3-409.
"Check” Section 3-104.
"Draft” Section 3-104.
"Holder in due course” Section 3-302.
"Instrument” Section 3-104.
"Notice of dishonor” Section 3-503.
"Order” Section 3-103.
"Ordinary care” Section 3-103.
"Person entitled to enforce” Section 3-301.
"Presentment” Section 3-501.
"Promise” Section 3-103.
"Prove” Section 3-103.
"Teller’s check” Section 3-104.
"Unauthorized signature” Section 3-403.

(d) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.
§46-4-210. Security interest of collecting bank in items, accompanying documents and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

1. In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

2. In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

3. If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to article nine but:

1. No security agreement is necessary to make the security interest enforceable (section 9-203(b)(3)(A));

2. No filing is required to perfect the security interest; and

3. The security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.
ARTICLE 4A. FUND TRANSFERS.

§46-4A–105. Other definitions.
§46-4A–106. Time payment order is received.
§46-4A–204. Refund of payment and duty of customer to report with respect to unauthorized payment order.

§46-4A–105. Other definitions.

(a) In this article:

(1) “Authorized account” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) “Banker” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

(3) “Customer” means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) “Funds-transfer business day” of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing and transmittal of payment orders and cancellations and amendments of payment orders.

(5) “Funds-transfer system” means a wire transfer network, automated clearing house or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.
(6) [reserved]

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (section 1-201(b)(8)).

(b) Other definitions applying to this article and the sections in which they appear are:

(1) "Acceptance", §46-4A-209.

(2) "Beneficiary", §46-4A-103.

(3) "Beneficiary's bank", §46-4A-103.

(4) "Executed", §46-4A-301.

(5) "Execution date", §46-4A-301.

(6) "Funds transfer", §46-4A-104.

(7) "Funds-transfer system rule", §46-4A-501.

(8) "Intermediary bank", §46-4A-104.

(9) "Originator", §46-4A-104.

(10) "Originator's bank", §46-4A-104.

(11) "Payment by beneficiary's bank to beneficiary", §46-4A-405.

(12) "Payment by originator to beneficiary", §46-4A-406.

(13) "Payment by sender to receiving bank", §46-4A-403.

(14) "Payment date", §46-4A-401.

(15) "Payment order", §46-4A-103.


(18) “Sender”, §46-4A-103.

(c) The following definitions in article four of this chapter apply to this article:

(1) “Clearing house”, §46-4-104.

(2) “Item”, §46-4-104.

(3) “Suspends payments”, §46-4-104.

(d) In addition, article one of this chapter contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-4A–106. Time payment order is received.

(a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 1-202. A receiving bank may fix a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.
18 (b) If this article refers to an execution date or payment date
19 or states a day on which a receiving bank is required to take
20 action, and the date or day does not fall on a funds-transfer
21 business day, the next day that is a funds-transfer business day
22 is treated as the date or day stated, unless the contrary is stated
23 in this article.

§46-4A–204. Refund of payment and duty of customer to report
with respect to unauthorized payment order.

1 (a) If a receiving bank accepts a payment order issued in the
2 name of its customer as sender which is: (1) Not authorized and
3 not effective as the order of the customer under §46-4A-202; or
4 (2) not enforceable, in whole or in part, against the customer
5 under §46-4A-203, the bank shall refund any payment of the
6 payment order received from the customer to the extent the
7 bank is not entitled to enforce payment, and shall pay interest
8 on the refundable amount calculated from the date the bank
9 received payment to the date of the refund. However, the
10 customer is not entitled to interest from the bank on the amount
11 to be refunded if the customer fails to exercise ordinary care to
determine that the order was not authorized by the customer and
to notify the bank of the relevant facts within a reasonable time
not exceeding ninety days after the date the customer received
notification from the bank that the order was accepted or that
the customer’s account was debited with respect to the order.
The bank is not entitled to any recovery from the customer on
account of a failure by the customer to give notification as
stated in this section.

20 (b) Reasonable time under subsection (a) of this section
21 may be fixed by agreement as stated in section 1-302(b), but the
22 obligation of a receiving bank to refund payment as stated in
23 subsection (a) of this section may not otherwise be varied by
24 agreement.
ARTICLE 5. LETTERS OF CREDIT.

§46-5–103. Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d), sections 5–102(a)(9) and (10), 5–106(d), and 5–114(d), and except to the extent prohibited in sections 1-302 and 5–117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

ARTICLE 7. WAREHOUSE RECEIPTS, BILL OF LADING AND OTHER DOCUMENTS OF TITLE.

PART 1. GENERAL.

§46-7-101. Short title.
§46-7-102. Definitions and index of definitions.
§46-7-103. Relation of article to treaty or statute.
§46-7-104. Negligible and nonnegotiable document of title.
§46-7-105. Reissuance in alternative medium.
§46-7-201. Person that may issue a warehouse receipt; storage under bond.
§46-7-202. Form of warehouse receipt; effect of omission.
§46-7-203. Liability for nonreceipt or misdescription.
§46-7-204. Duty of care; contractual limitation of warehouse’s liability.
§46-7-205. Title under warehouse receipt defeated in certain cases.
§46-7-206. Termination of storage of warehouse’s option.
§46-7-207. Goods must be kept separate; fungible goods.
§46-7-208. Altered warehouse receipts.
§46-7-209. Lien of warehouse.
§46-7-210. Enforcement of warehouse’s lien.
§46-7-301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.
§46-7-302. Through bills of lading and similar documents of title.
§46-7-303. Diversion; reconsignment; change of instructions.
§46-7-304. Tangible bills of lading in a set.
§46-7-305. Destination bills.
§46-7-306. Altered bills of lading.
§46-7-307. Lien of carrier.
§46-7-308. Enforcement of carrier’s lien.
§46-7-309. Duty of care; contractual limitation of carrier’s liability.
§46-7-401. Irregularities in issue of receipt or bill or conduct of issuer.
§46-7-402. Duplicate document of title; overissue.
§46-7-403. Obligation of bailee to deliver; excuse.
§46-7-404. No liability for good-faith delivery pursuant to document of title.
§46-7-501. Form of negotiation and requirements of due negotiation.
§46-7-502. Rights acquired by due negotiation.
§46-7-503. Document of title to goods defeated in certain cases.
§46-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.
§46-7-505. Indorser not guarantor for other parties.
§46-7-506. Delivery without indorsement: right to compel indorsement.
§46-7-507. Warranties on negotiation or delivery of document of title.
§46-7-508. Warranties of collecting bank as to documents of title.
§46-7-509. Adequate compliance with commercial contract.
§46-7-601. Lost, stolen or destroyed title.
§46-7-603. Conflicting claims; interpleader.
§46-7-701. Applicability.
§46-7-702. Savings clause.
§46-7-101. Short title.

This article may be cited as Uniform Commercial Code—Documents of Title.

§46-7-102. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) “Bailee” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) “Carrier” means a person that issues a bill of lading.

(3) “Consignee” means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) “Consignor” means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) “Delivery order” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) “Goods” means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) “Issuer” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or
apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

(9) “Person entitled under the document” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) “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.

(11) “Sign” means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) “Shipper” means a person that enters into a contract of transportation with a carrier.

(13) “Warehouse” means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

(1) “Contract for sale”, Section 2-106.

(2) “Lessee in the ordinary course of business”, Section 2A-103.

(3) “Receipt” of goods, Section 2-103.
(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-7-103. Relation of article to treaty or statute.

(a) This article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent the treaty, statute or regulatory statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This [act] modifies, limits, and 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(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between article one, chapter thirty-nine A and this article, this article governs.

§46-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c), a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) is nonnegotiable. A bill of lading that states that
the goods are consigned to a named person is not made
negotiable by a provision that the goods are to be delivered only
against an order in a record signed by the same or another
named person.

(c) A document of title is nonnegotiable if, at the time it is
issued, the document has a conspicuous legend, however
expressed, that it is nonnegotiable.

§46-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic
document of title, the issuer of the electronic document may
issue a tangible document of title as a substitute for the
electronic document if:

(1) The person entitled under the electronic document
surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a state-
ment that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in
substitution for an electronic document of title in accordance
with subsection (a):

(1) The electronic document ceases to have any effect or
validity; and

(2) The person that procured issuance of the tangible
document warrants to all subsequent persons entitled under the
tangible document that the warrantor was a person entitled
under the electronic document when the warrantor surrendered
control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible
document of title, the issuer of the tangible document may issue
an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c):

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.


(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

PART 2 - WAREHOUSE RECEIPTS: SPECIAL PROVISIONS.

§46-7-201. Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.
§46-7-202. Form of warehouse receipt; effect of omission.

1 (a) A warehouse receipt need not be in any particular form.

2 (b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

3      (1) A statement of the location of the warehouse facility where the goods are stored;

4      (2) The date of issue of the receipt;

5      (3) The unique identification code of the receipt;

6      (4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

7      (5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

8      (6) A description of the goods or the packages containing them;

9      (7) The signature of the warehouse or its agent;

10 (8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

11 (9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt,
in which case a statement of the fact that advances have been
made or liabilities incurred and the purpose of the advances or
liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are
not contrary to [the Uniform Commercial Code] and do not
impair its obligation of delivery under section 7-403 or its duty
of care under section 7-204. Any contrary provision is ineffec-
tive.

§46-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a
document of title, other than a bill of lading, that relies upon the
description of the goods in the document may recover from the
issuer damages caused by the nonreceipt or misdescription of
the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer
does not know whether all or part of the goods in fact were
received or conform to the description, such as a case in which
the description is in terms of marks or labels or kind, quantity,
or condition, or the receipt or description is qualified by
“contents, condition, and quality unknown”, “said to contain”,
or words of similar import, if the indication is true; or

(2) The party or purchaser otherwise has notice of the
nonreceipt or misdescription.

§46-7-204. Duty of care; contractual limitation of warehouse’s
liability.

A warehouse is liable for damages for loss of or injury
to the goods caused by its failure to exercise care with regard to
the goods that a reasonably careful person would exercise under
similar circumstances. Unless otherwise agreed, the warehouse
is not liable for damages that could not have been avoided by
the exercise of that care.
(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse’s liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

§46-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

§46-7-206. Termination of storage at warehouse’s option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 7-210.
(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) and section 7-210, the warehouse may specify in the notice given under subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

§46-7-207. Goods must be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.
(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner’s share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

§46-7-208. Altered warehouse receipts.

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

§46-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a
warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a), such as for money advanced and interest. The security interest is governed by article 9.

(c) A warehouse's lien for charges and expenses under subsection (a) or a security interest under subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under section 7-403; or

(C) Power of disposition under sections 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) is also
effective against all persons if the depositor was the legal
possessor of the goods at the time of deposit. In this subsection,
“household goods” means furniture, furnishings, or personal
effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it volun-
tarily delivers or unjustifiably refuses to deliver.

§46-7-210. Enforcement of warehouse’s lien.

(a) Except as otherwise provided in subsection(b), a
warehouse’s lien may be enforced by public or private sale of
the goods, in bulk or in packages, at any time or place and on
any terms that are commercially reasonable, after notifying all
persons known to claim an interest in the goods. The notifica-
tion must include a statement of the amount due, the nature of
the proposed sale, and the time and place of any public sale.
The fact that a better price could have been obtained by a sale
at a different time or in a method different from that selected by
the warehouse is not of itself sufficient to establish that the sale
was not made in a commercially reasonable manner. The
warehouse sells in a commercially reasonable manner if the
warehouse sells the goods in the usual manner in any recog-
nized market therefore, sells at the price current in that market
at the time of the sale, or otherwise sells in conformity with
commercially reasonable practices among dealers in the type of
goods sold. A sale of more goods than apparently necessary to
be offered to ensure satisfaction of the obligation is not
commercially reasonable, except in cases covered by the
preceding sentence.

(b) A warehouse may enforce its lien on goods, other than
goods stored by a merchant in the course of its business, only
if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods
must be notified.
(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse’s lien takes the goods free of any rights of persons
against which the lien was valid, despite the warehouse’s noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

PART 3—BILLs OF LADING: SPECIAL PROVISIONS.

§46-7-301. Liability for nonreceipt or misdescription; “said to contain”; “shipper’s weight, load and count”; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to
contain”, “shipper’s weight, load, and count”, or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading;

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as “shipper’s weight, load, and count” or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case, “shipper’s weight” or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words “shipper’s weight, load, and count”, or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.
§46-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and
(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

§46-7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdeliver, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

§46-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.
(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier’s obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee’s obligation on the whole bill.

§46-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 7-105, may procure a substitute bill to be issued at any place designated in the request.
§46-7-306. Altered bills of lading.

1 An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

§46-7-307. Lien of carrier.

1 (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier’s receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier’s lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

11 (b) A lien for charges and expenses under subsection(a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection(a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

20 (c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

§46-7-308. Enforcement of carrier’s lien.

1 (a) A carrier’s lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after
notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this article.

c) A carrier may buy at any public sale pursuant to this section.

d) A purchaser in good faith of goods sold to enforce a carrier’s lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier’s noncompliance with this section.

e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.
(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier’s lien may be enforced pursuant to either subsection(a) or the procedure set forth in section 7-210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

§46-7-309. Duty of care; contractual limitation of carrier’s liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier’s liability may not exceed a value stated in the bill or transportation agreement if the carrier’s rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier’s liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.
§46-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

§46-7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 7-105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

§46-7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:
(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse’s lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to section 2-705 or by a lessor of its right to stop delivery pursuant to section 2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to section 7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee’s lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under section 7-503(a):

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.
§46-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this article is not liable for the goods even if:

1 (1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

2 (2) The person to which the bailee delivered the goods did not have authority to receive the goods.

PART 5—WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER.

§46-7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

1 (1) If the document’s original terms run to the order of a named person, the document is negotiated by the named person’s indorsement and delivery. After the named person’s indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

2 (2) If the document’s original terms run to bearer, it is negotiated by delivery alone.

3 (3) If the document’s original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.
(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document’s original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document’s original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee’s rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the
negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

§46-7-502. Rights acquired by due negotiation.

(a) Subject to sections 7-205 and 7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

1 (1) Title to the document;

2 (2) Title to the goods;

3 (3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

4 (4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee’s obligation accrues only upon the bailee’s acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to section 7-503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

1 (1) The due negotiation or any prior due negotiation constituted a breach of duty;

2 (2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
§46-7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

1. Deliver and entrust them the goods or any document of title covering the goods to the bailor or the bailor’s nominee with:

   (A) Actual or apparent authority to ship, store, or sell;
   
   (B) Power to obtain delivery under section 7-403; or
   
   (C) Power of disposition under section 2-403, 2A-304(2), 2A-305(2), 9-320, or 9-321(c) or other statute or rule of law; or

2. Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier’s obligation to deliver.
§46-7-504. Rights acquired in absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

1. By those creditors of the transferor which could treat the transfer as void under section 2-402 or 2A-308;

2. By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

3. By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

4. As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 2-705 or a lessor under section 2A-526, subject to the require-
ments of due notification in those sections. A bailee that honors the seller’s or lessor’s instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

§46-7-505. Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

§46-7-506. Delivery without indorsement: right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

§46-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under section 7-508, unless otherwise agreed the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document’s validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

§46-7-508. Warranties of collecting bank as to documents of title.
A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority, even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

§46-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by article 2, 2A, or 5.

PART 6 - WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS.

§46-7-601. Lost, stolen or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant’s posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee’s reasonable costs and attorney’s fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good
faith is not conversion if the claimant posts security with the
bailee in an amount at least double the value of the goods at the
time of posting to indemnify any person injured by the delivery
which files a notice of claim within one year after the delivery.

§46-7-602. Judicial process against goods covered by negotiable
document of title.

Unless a document of title was originally issued upon
delivery of the goods by a person that did not have power to
dispose of them, a lien does not attach by virtue of any judicial
process to goods in the possession of a bailee for which a
negotiable document of title is outstanding unless possession or
control of the document is first surrendered to the bailee or the
document’s negotiation is enjoined. The bailee may not be
compelled to deliver the goods pursuant to process until
possession or control of the document is surrendered to the
bailee or to the court. A purchaser of the document for value
without notice of the process or injunction takes free of the lien
imposed by judicial process.

§46-7-603. Conflicting claims; interpleader.

If more than one person claims title to or possession of the
goods, the bailee is excused from delivery until the bailee has
a reasonable time to ascertain the validity of the adverse claims
or to commence an action for interpleader. The bailee may
assert an interpleader either in defending an action for
nondelivery of the goods or by original action.

PART 7 - MISCELLANEOUS PROVISIONS.

§46-7-701. Applicability.

This article applies to a document of title that is issued or
a bailment that arises on or after the effective date of this
article. This article does not apply to a document of title that is
issued or a bailment that arises before the effective date of this
article even if the document of title or bailment would be
subject to this article if the document of title had been issued or
bailment had arisen on or after the effective date of this article.
This article does not apply to a right of action that has accrued
before the effective date of this article.

§46-7-702. Savings clause.

A document of title issued or a bailment that arises before
the effective date of this article and the rights, obligations, and
interests flowing from that document or bailment are governed
by any statute or other rule amended or repealed by this article
as if amendment or repeal had not occurred and may be
terminated, completed, consummated, or enforced under that
statute or other rule.

ARTICLE 8. INVESTMENT SECURITIES.

§46-8–102. Definitions.

(a) In this article:

(1) “Adverse claim” means a claim that a claimant has a
property interest in a financial asset and that it is a violation of
the rights of the claimant for another person to hold, transfer, or
deal with the financial asset.

(2) “Bearer form”, as applied to a certificated security,
means a form in which the security is payable to the bearer of
the security certificate according to its terms but not by reason
of an indorsement.

(3) “Broker” means a person defined as a broker or dealer
under the federal securities laws, but without excluding a bank
acting in that capacity.
(4) “Certificated security” means a security that is represented by a certificate.

(5) “Clearing corporation” means:

(i) A person that is registered as a “clearing agency” under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) “Communicate” means to:

(i) Send a signed writing; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) “Entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 8-501(b)(2) or (3), that person is the entitlement holder.

(8) “Entitlement order” means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) “Financial asset”, except as otherwise provided in section 8-103, means:
(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article. As context requires, the term means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate or a security entitlement.

(10)[reserved]

(11) “Indorsement” means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem it.

(12) “Instruction” means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) “Registered form”, as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and
(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) “Securities intermediary” means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) “Security”, except as otherwise provided in section 8-103, means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

(16) “Security certificate” means a certificate representing a security.
“Security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

“Uncertificated security” means a security that is not represented by a certificate.

(b) Other definitions applying to this article and the sections in which they appear are:

- “Appropriate person” Section 8-107
- “Control” Section 8-106
- “Delivery” Section 8-301
- “Investment company security” Section 8-103
- “Issuer” Section 8-201
- “Overissue” Section 8-210
- “Protected purchaser” Section 8-303
- “Securities account” Section 8-501

(c) In addition, article one contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business or transaction for purposes of this article does not determine the characterization of the person, business or transaction for purposes of any other law, regulation or rule.

§46-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company or similar entity is a security.

(b) An “investment company security” is a security. “Investment company security” means a share or similar equity
interest issued by an entity that is registered as an investment
company under the federal investment company laws, an
interest in a unit investment trust that is so registered or a
face-amount certificate issued by a face-amount certificate
company that is so registered. Investment company security
does not include an insurance policy or endowment policy or
annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company
is not a security unless it is dealt in or traded on securities
exchanges or in securities markets, its terms expressly provide
that it is a security governed by this article or it is an investment
company security. However, an interest in a partnership or
limited liability company is a financial asset if it is held in a
securities account.

(d) A writing that is a security certificate is governed by
this article and not by article three of this chapter, even though
it also meets the requirements of that article. However, a
negotiable instrument governed by article three is a financial
asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing
corporation to its participants is not a security, but is a financial
asset.

(f) A commodity contract, as defined in section
9-102(a)(15), is not a security or a financial asset.

(g) A document of title is not a financial asset unless
section 8-102(a)(9)(iii) applies.

ARTICLE 9. SECURED TRANSACTIONS.

§46-9-102. Definitions and index of definitions.
§46-9-203. Attachment and enforceability of security interest; proceeds; supporting
obligations; formal requisites.
§46-9-207. Rights and duties of secured party having possession or control of
collateral.
§46-9-208. Additional duties of secured party having control of collateral.

§46-9-301. Law governing perfection and priority of security interests.

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

§46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

§46-9-313. When possession by or delivery to secured party perfects security interest without filing.

§46-9-314. Perfection by control.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

§46-9-516. What constitute filing; effectiveness of filing.

§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

§46-9-102. Definitions and index of definitions.

1 (a) Article 9 definitions. In this article:

2 (1) “Accession” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

3 (2) “Account”, except as used in “account for”, means a right to payment of a monetary obligation, whether or not earned by performance: (i) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person
licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include:

(i) Rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter-of-credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) “Account debtor” means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) “Accounting”, except as used in “accounting for”, means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) “Agricultural lien” means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor’s farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;
(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record, in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.
(9) “Cash proceeds” means proceeds that are money, checks, deposit accounts or the like.

(10) “Certificate of title” means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) “Chattel paper” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, “monetary obligation” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) Charters or other contracts involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) “Collateral” means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) “Commercial tort claim” means a claim arising in tort with respect to which:
(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant’s business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

“Commodity account” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

“Commodity contract” means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange or market and is carried on the books of a commodity intermediary for a commodity customer.

“Commodity customer” means a person for which a commodity intermediary carries a commodity contract on its books.

“Commodity intermediary” means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been
designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and
(D) The transaction does not create a security interest that secures an obligation.

(21) “Consignor” means a person that delivers goods to a consignee in a consignment.

(22) “Consumer debtor” means a debtor in a consumer transaction.

(23) “Consumer goods” means goods that are used or bought for use primarily for personal, family or household purposes.

(24) “Consumer-goods transaction” means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) “Consumer transaction” means a transaction in which:

(i) An individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.

(27) “Continuation statement” means an amendment of a financing statement which:
(A) Identifies, by its file number, the initial financing
statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that
it is filed to continue the effectiveness of, the identified
financing statement.

(28) “Debtor” means:

(A) A person having an interest, other than a security
interest or other lien, in the collateral, whether or not the person
is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles
or promissory notes; or

(C) A consignee.

(29) “Deposit account” means a demand, time; savings,
passbook or similar account maintained with a bank. The term
does not include investment property or accounts evidenced by
an instrument.

(30) “Document” means a document of title or a receipt of
the type described in section 7-201(b).

(31) “Electronic chattel paper” means chattel paper
evidenced by a record or records consisting of information
stored in an electronic medium.

(32) “Encumbrance” means a right, other than an ownership
interest, in real property. The term includes mortgages and
other liens on real property.

(33) “Equipment” means goods other than inventory, farm
products or consumer goods.
(34) “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing or to be grown, including:

(i) Crops produced on trees, vines and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) “Farming operation” means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation.

(36) “File number” means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) “Filing office” means an office designated in section 9-501 as the place to file a financing statement.

(38) “Filing-office rule” means a rule adopted pursuant to section 9-526.

(39) “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) “Fixture filing” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing
234 of a financing statement covering goods of a transmitting utility
which are or are to become fixtures.

236 (41) “Fixtures” means goods that have become so related to
particular real property that an interest in them arises under real
property law.

239 (42) “General intangible” means any personal property,
including things in action, other than accounts, chattel paper,
commercial tort claims, deposit accounts, documents, goods,
instrumets, investment property, letter-of-credit rights, letters
of credit, money and oil, gas or other minerals before extrac-
tion. The term includes payment intangibles and software.

245 (43) [reserved].

246 (44) “Goods” means all things that are movable when a
security interest attaches. The term includes: (i) Fixtures; (ii)
standing timber that is to be cut and removed under a convey-
ance or contract for sale; (iii) the unborn young of animals; (iv)
crops grown, growing or to be grown, even if the crops are
produced on trees, vines or bushes; and (v) manufactured
homes. The term also includes a computer program embedded
in goods and any supporting information provided in connec-
tion with a transaction relating to the program if: (i) The
program is associated with the goods in such a manner that it
customarily is considered part of the goods; or (ii) by becoming
the owner of the goods, a person acquires a right to use the
program in connection with the goods. The term does not
include a computer program embedded in goods that consist
solely of the medium in which the program is embedded. The
term also does not include accounts, chattel paper, commercial
tort claims, deposit accounts, documents, general intangibles,
instruments, investment property, letter-of-credit rights, letters
of credit, money or oil, gas, or other minerals before extraction.

265 (45) “Governmental unit” means a subdivision, agency,
department, county, parish, municipality or other unit of the
government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) “Health-care-insurance receivable” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) “Instrument” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) Investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) “Inventory” means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) “Investment property” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.
(50) “Jurisdiction of organization”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(51) “Letter-of-credit right” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) “Lien creditor” means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) “Manufactured home” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.
“Manufactured-home transaction” means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

“Mortgage” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

“New debtor” means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

“New value” means: (i) Money; (ii) money’s worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

“Noncash proceeds” means proceeds other than cash proceeds.

“Obligor” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) Owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable, in whole or in part, for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.
(60) “Original debtor” except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 9-203(d).

(61) “Payment intangible” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

(62) “Person related to”, with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual’s spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

(63) “Person related to”, with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);
(D) The spouse of an individual described in subparagraph (A), (B) or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) and shares the same home with the individual.

(64) “Proceeds”, except as used in section 9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) “Production-money crops” means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) “Production-money obligation” means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.
(67) “Production of crops” includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops and protecting them from damage or disease.

(68) “Promissory note” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) “Proposal” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

(70) “Public-finance transaction” means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) “Pursuant to commitment”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.
(72) “Record”, except as used in “for record”, “of record”, “record or legal title” and “record owner”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(73) “Registered organization” means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(74) “Secondary obligor” means an obligor to the extent that:

(A) The obligor’s obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

(75) “Secured party” means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or
A person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

(76) "Security agreement" means an agreement that creates or provides for a security interest.

(77) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (A).

(78) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(79) "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.

(80) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(81) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.
(82) “Termination statement” means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(83) “Transmitting utility” means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway or trolley bus;

(B) Transmitting communications electrically, electromagnetically or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) Definitions in other articles. “Control” as provided in section 7-106 and the following definitions in other articles apply to this article:

“Applicant”  
Section 5-102.

“Beneficiary”  
Section 5-102.

“Broker”  
Section 8-102.

“Certificated security”  
Section 8-102.

“Check”  
Section 3-104.

“Clearing corporation”  
Section 8-102.

“Contract for sale”  
Section 2-106.

“Customer”  
Section 4-104.

“Entitlement holder”  
Section 8-102.

“Financial asset”  
Section 8-102.
(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.
(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. Except as otherwise provided in subsections (c) through (i), inclusive, of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under section 9-313 pursuant to the debtor’s security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-301 pursuant to the debtor’s security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor’s security agreement.
(c) Other UCC provisions. Subsection (b) of this section is subject to section 4-210 on the security interest of a collecting bank, section 5-118 on the security interest of a letter-of-credit issuer or nominated person, section 9-110 on a security interest arising under article two or two-a of this chapter and section 9-206 on security interests in investment property.

(d) When person becomes bound by another person’s security. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person’s property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.
(g) Lien securing right to payment. The attachment of a
security interest in a right to payment or performance secured
by a security interest or other lien on personal or real property
is also attachment of a security interest in the security interest,
mortgage or other lien.

(h) Security entitlement carried in securities account. The
attachment of a security interest in a securities account is also
attachment of a security interest in the security entitlements
carried in the securities account.

(i) Commodity contracts carried in commodity account.
The attachment of a security interest in a commodity account is
also attachment of a security interest in the commodity
contracts carried in the commodity account.

§46-9-207. Rights and duties of secured party having possession
or control of collateral.

(a) Duty of care when secured party in possession. Except
as otherwise provided in subsection (d), a secured party shall
use reasonable care in the custody and preservation of collateral
in the secured party’s possession. In the case of chattel paper or
an instrument, reasonable care includes taking necessary steps
to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties and rights when secured party in
possession. Except as otherwise provided in subsection (d), if
a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance
and payment of taxes or other charges, incurred in the custody,
preservation, use or operation of the collateral are chargeable to
the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to
the extent of a deficiency in any effective insurance coverage;
(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:
   (A) For the purpose of preserving the collateral or its value;
   (B) As permitted by an order of a court having competent jurisdiction; or
   (C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

   (A) To charge back uncollected collateral; or
   (B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other
default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

§46-9-208. Additional duties of secured party having control of collateral.

(a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor’s name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;
(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;
If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

§46-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:
(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) General rule: perfection by filing. Except as otherwise provided in subsection (b) of this section and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 9-308(d), (e), (f) or (g);

(2) That is perfected under section 9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 9-311(a);

(4) In goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing, control, or possession under section 9-312(e), (f) or (g);
(6) In collateral in the secured party’s possession under section 9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property or letter-of-credit rights which is perfected by control under section 9-314;

(9) In proceeds which is perfected under section 9-315; or

(10) That is perfected under section 9-316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

§46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 9-314; and
(2) Except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) A security interest in money may be perfected only by the secured party’s taking possession under section 9-313.

c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee’s receipt of notification of the secured party’s interest; or

(3) Filing as to the goods.

e) Temporary perfection: new value. A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.
36 (f) Temporary perfection: goods or documents made
37 available to debtor. A perfected security interest in a negotiable
38 document or goods in possession of a bailee, other than one that
39 has issued a negotiable document for the goods, remains
40 perfected for twenty days without filing if the secured party
41 makes available to the debtor the goods or documents repre-
42 senting the goods for the purpose of:

43 (1) Ultimate sale or exchange; or

44 (2) Loading, unloading, storing, shipping, transshipping,
45 manufacturing, processing or otherwise dealing with them in a
46 manner preliminary to their sale or exchange.

47 (g) Temporary perfection: delivery of security certificate or
48 instrument to debtor. A perfected security interest in a certifi-
49 cated security or instrument remains perfected for twenty days
50 without filing if the secured party delivers the security certifi-
51 cate or instrument to the debtor for the purpose of:

52 (1) Ultimate sale or exchange; or

53 (2) Presentation, collection, enforcement, renewal or
54 registration of transfer.

55 (h) Expiration of temporary perfection. After the
56 twenty-day period specified in subsection (e), (f) or (g) of this
57 section expires, perfection depends upon compliance with this
58 article.

§46-9-313. When possession by or delivery to secured party
perfects security interest without filing.

1 (a) Perfection by possession or delivery. Except as
2 otherwise provided in subsection (b) of this section, a secured
3 party may perfect a security interest in tangible negotiable
4 documents, goods, instruments, money or tangible chattel paper
by taking possession of the collateral. A secured party may
perfect a security interest in certificated securities by taking
delivery of the certificated securities under section 8-301.

(b) Goods covered by certificate of title. With respect to
goods covered by a certificate of title issued by this state, a
secured party may perfect a security interest in the goods by
taking possession of the goods only in the circumstances
described in section 9-316(d).

(c) Collateral in possession of person other than debtor.
With respect to collateral other than certificated securities and
goods covered by a document, a secured party takes possession
of collateral in the possession of a person other than the debtor,
the secured party or a lessee of the collateral from the debtor in
the ordinary course of the debtor’s business, when:

(1) The person in possession authenticates a record
acknowledging that it holds possession of the collateral for the
secured party’s benefit; or

(2) The person takes possession of the collateral after
having authenticated a record acknowledging that it will hold
possession of collateral for the secured party’s benefit.

(d) Time of perfection by possession; continuation of
perfection. If perfection of a security interest depends upon
possession of the collateral by a secured party, perfection
occurs no earlier than the time the secured party takes posses-
sion and continues only while the secured party retains
possession.

(e) Time of perfection by delivery; continuation of
perfection. A security interest in a certificated security in
registered form is perfected by delivery when delivery of the
certificated security occurs under section 8-301 and remains
perfected by delivery until the debtor obtains possession of the
security certificate.
(f) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party’s benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party’s benefit:

(1) The acknowledgment is effective under subsection (c) of this section or section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) Secured party’s delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor’s business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) Effect of delivery under subsection (h); no duties or confirmation. To hold possession of the collateral for the secured party’s benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.
§46-9-314. Perfection by control.

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107.

(b) Specified collateral: time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105 or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

1. The secured party does not have control; and
2. One of the following occurs:
   (A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
   (B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or
   (C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.
(a) Conflicting security interests and rights of lien creditors. A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time: (A) The security interest or agricultural lien is perfected; or (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. Except as otherwise provided in sections 9-320 and 9-321, if a person files a
financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

§46-9-516. What constitutes filing; effectiveness of filing.

(a) **What constitutes filing.** Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) **Refusal to accept record; filing does not occur.** Filing does not occur with respect to a record that a filing office refuses to accept because:
8 (1) The record is not communicated by a method or medium of communication authorized by the filing office;

9 (2) An amount equal to or greater than the applicable filing fee is not tendered;

10 (3) The filing office is unable to index the record because:

11   (A) In the case of an initial financing statement, the record does not provide a name for the debtor;

12   (B) In the case of an amendment or correction statement, the record:

13     (i) Does not identify the initial financing statement as required by section 9-512 or 9-518, as applicable; or

14     (ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515;

15   (C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor’s last name; or

16   (D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

17 (4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;
(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

  (A) Provide a mailing address for the debtor;

  (B) Indicate whether the debtor is an individual or an organization; or

  (C) If the financing statement indicates that the debtor is an organization, provide:

     (i) A type of organization for the debtor;

     (ii) A jurisdiction of organization for the debtor; or

     (iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). For purposes of subsection (b):

  (1) A record does not provide information if the filing office is unable to read or decipher the information; and

  (2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.
(d) \textbf{Refusal to accept record; record effective as filed record.} A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

(e) \textbf{Administrative review.} If the Secretary of State determines that a financing statement which identifies a public official or employee as a debtor is fraudulent or that an individual debtor and an individual secured party would appear to be the same individual on the financing statement or that the individual debtor claims to be a transmitting utility, without supporting documents, the Secretary may commence administrative proceedings to remove the statement from its records in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(1) Upon the commencement of proceedings pursuant to this subsection, the Secretary of State shall identify the financing statement in its records as subject to administrative review and publish a notice in the \textit{West Virginia Register} regarding the proceedings.

(2) A financing statement may be found to be fraudulent only if, based upon clear and convincing evidence, no good faith basis exists upon which to conclude that the secured party was authorized to file the statement and the statement was submitted for the purpose of harassment or intimidation or fraudulent intent of the alleged debtor.

(3) If upon the completion of administrative review, it is determined that the filing of a financing statement was fraudulent, the filing party shall be assessed all costs incurred by the Secretary in reaching a final determination, including
reimbursement for all costs of the hearing. The filing party may also be subject to a civil penalty not exceeding five hundred dollars per fraudulent filing. If upon completion of administrative review or any subsequent appeal of a decision of the Secretary of State, it is determined that a filing subject to appeal is not fraudulent, the secretary or court may award the prevailing party reasonable costs and expenses, including attorney fees.

(4) The Secretary of State shall annually submit a report to the Legislature regarding actions taken against fraudulent filings pursuant to this section which identifies the number and characteristics of such proceedings, identifies any creditors found to have made fraudulent filings, describes proceedings initiated by the secretary in which it is ultimately determined that fraudulent filings did not occur, describes the number and type of complaints received by the Secretary in which it is alleged that fraudulent filings have occurred, and describes the actions taken by the secretary to investigate complaints concerning allegedly fraudulent filings and the results of the investigations.

(5) A decision by the secretary to remove a financing statement determined to have been fraudulently filed subject to appeal de novo to the Circuit Court of Kanawha County. Pending the outcome of an appeal, the financing statement may not be removed from the records of the Secretary, but shall be identified in the records as having been adjudicated to be fraudulent, subject to a pending appeal by the putative creditor.

(6) A financing statement filed by a regulated financial institution is not subject to the provisions of this section. For the purposes of this section, a regulated financial institution is a bank, bank and trust company, trust company, savings bank, savings association, building and loan association, credit union, consumer finance company, insurance company, investment
company, mortgage lender or broker, securities broker, dealer or underwriter, or other institution chartered, licensed, registered or otherwise authorized under federal law, the law of this state or any other state, to engage in secured lending.

§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107 has the rights and duties provided in section 9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) of this section and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be
made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

CHAPTER 248

(Com. Sub. for H. B. 4536 — By Delegate Amores)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2E-2, relating
generally to improving competition among telephone public utilities providing landline services to business customers; limiting termination fees charged by telephone public utilities for landline service to business customers and providing method of computing termination fee; specifying how this act applies to existing landline business customer services agreements, whether in their original term or in a rollover term; and providing that act does not apply to services agreements between two telephone public utilities.

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 §24-2E-2, to read as follows:

ARTICLE 2E. REQUIREMENTS FOR PHONE SERVICE SALES.

§24-2E-2. Telephone services agreements.

(a) Limitation on termination fees. — On and after the effective date of this section, no telephone public utility may, in connection with its continued provision of landline telephone service pursuant to an automatic renewal provision contained in a customer service agreement with a business customer, impose a termination fee that is greater than the charges for one month’s service, which fee shall be computed by averaging the service charges invoiced to the terminating customer during the preceding four months.

(b) Service agreements already automatically renewed. — If, as of the effective date of this section, a telephone public utility is providing landline telephone service to a customer pursuant to an automatic renewal provision contained in a customer service agreement with a business customer, the telephone public utility may not impose a termination fee that is greater than the charges for two months’ service, which fee
shall be computed by averaging the service charges invoiced to the terminating customer during the preceding four months.

(c) Limitation on applicability. —

(1) Nothing herein shall be construed as preventing a telephone public utility and its business customers from entering into customer service agreements, governing, among other matters, any termination fee that may be imposed on the customer for terminating the service agreement during its initial term.

(2) The provisions of this section do not apply to service agreements between one telephone public utility and another telephone public utility.

CHAPTER 249

(Com. Sub. for H. B. 4565 — By Delegates Beane, Ennis, Talbott and G. White)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to repeal §16-5-12a, §16-5-12b, §16-5-18a and §16-5-18b of the Code of West Virginia, 1931, as amended; to amend and reenact §16-5-1, §16-5-2, §16-5-3, §16-5-4, §16-5-5, §16-5-6, §16-5-7, §16-5-8, §16-5-9, §16-5-10, §16-5-11, §16-5-12, §16-5-13, §16-5-14, §16-5-15, §16-5-16, §16-5-17, §16-5-18, §16-5-19, §16-5-20, §16-5-21, §16-5-22, §16-5-23, §16-5-24, §16-5-25, §16-5-26, §16-5-27, §16-5-28, §16-5-29, §16-5-30, §16-5-31, §16-5-32, §16-5-33, §16-5-34, §16-5-35 and §16-5-36 of said code; and to amend said code by adding thereto two new
sections, designated §16-5-37 and §16-5-38, all relating to vital statistics; defining terms; establishing section of vital statistics in Bureau for Public Health; authorizing the Department of Health and Human Resources to propose legislative rules; authorizing the appointment of a State Registrar; delineating duties and powers of State Registrar; authorizing registration districts; authorizing appointment and removal of local registrars and deputy local registrars; delineating duties of local registrars and deputy local registrars; authorizing State Registrar to approved document forms; requiring the filing of certificates of birth; establishing criteria for paternity to be indicated on birth certificate; allowing for amendment of birth records; requiring the reporting of specified birth defects; requiring notations of missing children on birth records; requiring reporting of infants of unknown parentage; providing for delayed registration of births; providing for establishment of facts of birth through judicial procedure; requiring courts to report adoptions, annulments of adoptions or amendments of orders of adoptions; requiring courts to report paternity determinations; providing for new birth certificates following adoption, legitimation, or paternity acknowledgment or determination; requiring reporting of death, fetal death and induced termination of pregnancy; providing for delayed registration of death; authorizing disposition, disinterment and reinterment permits; authorizing corrections and amendments to vital records; authorizing reproduction and disposal of vital records; providing for disclosure of information for research purposes; providing for issuance of certified copies of vital records; authorizing fees for copies and record searches; setting forth duties to keep records and furnish vital information; authorizing registrar to match birth and death records; limiting use of social security numbers; authorizing the establishment of system of registering records of marriage, divorce and annulment; requiring reporting of marriages, divorces and annulments; and providing criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:
That §16-5-12a, §16-5-12b, §16-5-18a and §16-5-18b of the Code of West Virginia, 1931, as amended, be repealed; that §16-5-1, §16-5-2, §16-5-3, §16-5-4, §16-5-5, §16-5-6, §16-5-7, §16-5-8, §16-5-9, §16-5-10, §16-5-11, §16-5-12, §16-5-13, §16-5-14, §16-5-15, §16-5-16, §16-5-17, §16-5-18, §16-5-19, §16-5-20, §16-5-21, §16-5-22, §16-5-23, §16-5-24, §16-5-25, §16-5-26, §16-5-27, §16-5-28, §16-5-29, §16-5-30, §16-5-31, §16-5-32, §16-5-33, §16-5-34, §16-5-35 and §16-5-36 of said code be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §16-5-37 and §16-5-38, all to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-1. Definitions.
§16-5-2. Establishment of section of vital statistics in Bureau for Public Health.
§16-5-3. Department of Health and Human Resources to propose legislative rules.
§16-5-5. Powers and duties of State Registrar.
§16-5-6. Registration districts.
§16-5-7. Appointment and removal of local registrars and deputy local registrars.
§16-5-8. Duties of local registrars and deputy local registrars.
§16-5-9. Content of certificates and reports.
§16-5-10. Birth registration acknowledgment and rescission of paternity.
§16-5-11. Registration of infants and minors born with specified birth defects.
§16-5-12. Notation on birth records of missing children.
§16-5-13. Registration of infants of unknown parentage.
§16-5-14. Delayed registration of births.
§16-5-17. Court reports of determination of paternity.
§16-5-18. Certificates of birth following adoption, legitimation, paternity acknowledgment and court determination of paternity.
§16-5-19. Death registration.
§16-5-20. Delayed registration of death.
§16-5-21. Reports of fetal death.
§16-5-22. Reports of induced termination of pregnancy.
§16-5-23. Authorization for disposition and disinterment and reinterment permits.
§16-5-24. Extension of time for filing certificates, reports and authorizations.
§16-5-25. Correction and amendment of vital records.
§16-5-27. Disclosure of information from vital records or vital reports.
§16-5-28. Copies from the system of vital statistics.
§16-5-29. Fees for copies and searches.
§16-5-30. Persons required to keep records.
§16-5-31. Duty to furnish information relative to vital events.
§16-5-32. Matching of birth and death certificates.
§16-5-33. Limitation on use of social security numbers.
§16-5-34. Uniform system of registration of marriage, divorce and annulment of marriage.
§16-5-35. Registration of marriages.
§16-5-36. Registration of divorces and annulments of marriages.
§16-5-37. Applicability to previously received certificates and reports.
§16-5-38. Penalties.

§16-5-1. Definitions.

1 As used in this article, unless the context otherwise requires, the following terms have the following meanings:

2 (1) "Bureau" means the Bureau for Public Health within the Department of Health and Human Resources.

3 (2) "Commissioner" means the Commissioner of the Bureau for Public Health within the Department of Health and Human Resources.

4 (3) "Date of filing" means the date a vital record is accepted for registration by the section of vital statistics of the state Bureau for Public Health.

5 (4) "Dead body" means a human body or parts of a human body or bones from the condition of which it reasonably may be concluded that death occurred.

6 (5) "Department" means the Department of Health and Human Resources.

7 (6) "Deputy local registrar" means a person appointed by and working under the supervision of a local registrar in the discharge of the vital statistics functions specified to be
performed in and for the county or other district of the local registrar.

(7) “Fetal death” means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy, such death being indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles.

(8) “Filing” means the presentation and acceptance of a vital record or report provided in this article for registration by the section of vital statistics of the state Bureau for Public Health.

(9) “Final disposition” means the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus.

(10) “Induced termination of pregnancy” means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant, and which does not result in live birth. The definition excludes management of prolonged retention of products of conception following fetal death.

(11) “Institution” means any establishment, public or private, which provides inpatient or outpatient medical, surgical, or diagnostic care or treatment, or nursing, custodial or domiciliary care to two or more unrelated individuals or to which persons are committed by law.

(12) “Licensed health professional” means an individual who is licensed by the State of West Virginia to practice a health profession.
(13) “Live birth” means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(14) “Local registrar” means the person appointed by the State Registrar of Vital Statistics for a county or other district to perform the vital statistics functions specified to be performed in and for the county or other district.

(15) “Physician” means a person licensed to practice medicine or osteopathy pursuant to the laws of this state.

(16) “Registration” means the process by which vital records are completed, filed and incorporated into the official records of the section of vital statistics.

(17) “Research” means a systematic investigation designed primarily to develop or contribute to general knowledge.

(18) “System of vital statistics” means the registration, collection, preservation, amendment, certification of vital records, the collection of other reports required by this article, and related activities, including, but not limited to, the tabulation, analysis, publication and dissemination of vital statistics.

(19) “Vital records” means certificates or reports and data related to birth, death, and marriage, including divorce, dissolution of marriage, and annulment.

(20) “Vital reports” means reports and related data designated in this article and in rules.
“Vital statistics” means the data derived from certificates and reports of birth, death, fetal death, marriage, divorce, annulment and related records and reports.

§16-5-2. Establishment of section of vital statistics in Bureau for Public Health.

(a) There is established in the state Bureau for Public Health a section of vital statistics which shall install, maintain and operate the only system of vital statistics throughout this state.

(b) The section of vital statistics shall be provided with sufficient staff, suitable offices with a fire-proof vault and a nonliquid fire suppression system for the protection of paper records and magnetic media and other resources for the proper administration of the system of vital statistics and for the preservation and security of its official records.

§16-5-3. Department of Health and Human Resources to propose legislative rules.

(a) The Department of Health and Human Resources shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for:

(1) Adequate standards of security and confidentiality of vital records;

(2) Requirements for individuals in the state who may be designated by the State Registrar to aid in the administration of the system of vital statistics;

(3) Criteria for registration districts throughout the state;
(4) Requirements for the completion, filing, correction and amendment of certificates, reports and other documents required by this article;

(5) Requirements for registering a delayed certificate of birth, including provisions for dismissing an application which is not actively pursued;

(6) Inspection of evidence of adoption, annulment of adoption, legitimation or court determination of paternity;

(7) Completion of the medical certification of the cause of death;

(8) Record keeping requirements for receipt, removal, delivery, burial, cremation or other final disposition of a dead body or a fetus;

(9) Authorization for the disinterment and reinterment of a dead body or a fetus;

(10) Extension of prescribed time periods for the filing of certificates of death, reports of fetal death and authorizations for disposition and disinterment and reinterment, including authorization for disposition prior to filing a certificate of death;

(11) Disposal of original records from which permanent reproductions have been made;

(12) Disclosure of confidential information for administrative, statistical or research purposes;

(13) Release of records of birth, death, fetal death, marriage, divorce or annulment, subject to the provisions of section twenty-seven of this article;
(14) Authorization for preparing, issuing or obtaining copies of vital records;

(15) Requirements for matching and marking certificates of birth and death for the purpose of preventing the fraudulent use of birth certificates;

(16) Utilization of social security numbers to meet requirements of federal law;

(17) Requirements for a statewide system of registering, indexing and preserving records of marriage, divorce and annulment of marriage; and

(18) Any other purpose to carry out the requirements of this article.

(b) Any rules in effect as of the passage of this article will remain in effect until amended, modified, repealed or replaced, except that references to provisions of former enactments of this article are interpreted to mean provisions of this article.


The Commissioner of the Bureau for Public Health shall appoint the State Registrar of Vital Statistics, hereinafter referred to as the “State Registrar.”

§16-5-5. Powers and duties of State Registrar.

(a) The State Registrar shall:

(1) Administer and enforce the provisions of this article and the rules promulgated pursuant to this article, and issue instructions for the efficient administration of the system of vital statistics;
(2) Direct and supervise the system of vital statistics and the operation of the section of vital statistics, and act as custodian of its records;

(3) Direct, supervise, and control all activities pertaining to the operation of the system of vital statistics;

(4) Conduct training programs to promote uniformity of policy and procedures throughout the state in matters pertaining to the system of vital statistics;

(5) Prescribe, furnish, and distribute forms required by this article and the rules promulgated pursuant to this article, and prescribe means for transmission of data to accomplish the purpose of complete and accurate reporting and registration;

(6) Prepare and publish annual reports of vital statistics of this state, and other reports required by the commissioner;

(7) Provide to local health agencies copies of or data derived from certificates and reports required under this article as the State Registrar may determine are necessary for local health planning and program activities: Provided, That the copies and data remain the property of the section of vital statistics, and the uses that may be made of them are governed by the State Registrar; and

(8) Offer voluntary paternity establishment services in accordance with federal regulations set forth in 45 CFR 303.5(g).

(b) The State Registrar may:

(1) Designate individuals in the state as meet the requirements provided by rule to aid in the efficient administration of the system of vital statistics;
(2) Delegate functions and duties to employees of the section of vital statistics and to individuals designated under subdivision (1) of this subsection;

(3) Investigate, personally or by a duly delegated representative, cases of irregularity or violation of law arising under the provisions of this article;

(4) Report cases of violation of any of the provisions of this article to the prosecuting attorney of the county, with a statement of the facts and circumstances. The prosecuting attorney may prosecute the person or corporation responsible for the alleged violation of law. Upon request of the State Registrar, the Attorney General shall assist in the enforcement of the provisions of this article.

§16-5-6. Registration districts.

Subject to the rules promulgated by the department, the commissioner may establish, eliminate, consolidate, subdivide or alter the boundaries of, registration districts throughout the state.

§16-5-7. Appointment and removal of local registrars and deputy local registrars.

(a) The State Registrar may appoint one or more local registrars and deputy local registrars, and may assign them to one or more registration districts.

(b) The State Registrar may remove a local registrar or a deputy local registrar for reasonable cause.

§16-5-8. Duties of local registrars and deputy local registrars.

(a) A local registrar shall:
(1) Administer and enforce the provisions of this article and the rules promulgated pursuant to this article, according to the instructions of the State Registrar;

(2) Require that certificates be completed and filed in accordance with provisions of this article and the rules promulgated pursuant to this article;

(3) Transmit, by mail or an approved electronic process, all certificates, reports or other returns to the State Registrar on a schedule to be determined by the State Registrar;

(4) Maintain records, make reports and perform other duties as required by the State Registrar.

(b) A deputy local registrar shall perform the duties of the local registrar in the absence or incapacity of the local registrar, and shall perform other duties as prescribed by the State Registrar.

§16-5-9. Content of certificates and reports.

(a) To promote uniformity in the system of vital statistics, in addition to the items required by state law, the forms of certificates, reports and other returns required by this article or by rules promulgated pursuant to this article shall include the items recommended by the federal agency responsible for national vital statistics, subject to the commissioner’s approval or modification.

(b) The State Registrar shall approve the form and format for each certificate, report, and other documents required by this article.

(c) All vital records shall contain the date of filing.

(d) Information required in certificates, forms, records, or reports authorized by this article may be filed, verified,
registered and stored by photographic, electronic, or other means as prescribed by the State Registrar.

§16-5-10. Birth registration acknowledgment and rescission of paternity.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the State Registrar, within seven days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in transit to or in an institution, the person in charge of the institution or his or her authorized designee shall obtain all data required by the certificate, prepare the certificate, certify either by signature or by an approved electronic process that the child was born alive at the place and time and on the date stated, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance, or any person providing prenatal care shall provide the medical information required by the certificate within seventy-two hours after the birth.

(c) When a birth occurs other than in transit to or in an institution, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority in accordance with legislative rule:

(1) The physician in attendance at or immediately after the birth;

(2) Any other person in attendance at or immediately after the birth;

(3) The father or the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
(4) Any other person qualified by the department by rule to establish the facts of birth.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state, and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of birth registration, the woman who gives birth to the child is presumed to be the mother, unless otherwise specifically provided by state law or determined by a court of competent jurisdiction prior to the filing of the certificate of birth.

(f) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the most recent husband shall be entered on the certificate as the father of the child, unless:

(1) Paternity has been determined otherwise by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in which case the name of the father as determined by the court shall be entered on the certificate; or

(2) Genetic testing shows that the alleged father is the biological father of the child pursuant to the following guidelines:

(A) The tests show that the inherited characteristics including, but not limited to, blood types, have been determined
by appropriate testing procedures at a hospital, independent
medical institution or independent medical laboratory duly
licensed under the laws of this state, or any other state, and an
expert qualified as an examiner of genetic markers has
analyzed, interpreted and reported on the results; and

(B) The blood or tissue or other genetic test results show a
statistical probability of paternity of more than ninety-eight
percent; or

(3) The mother, her husband, and an alleged father ac-
knowledge that the husband is not the biological father and that
the alleged father is the true biological father: Provided, That
the conditions set forth in paragraphs (A) through (D) are met:

(A) The mother executes an affidavit of nonpaternity
attesting that her husband is not the biological father of the
child and that another man is the biological father; and

(B) The man named as the alleged biological father
executes an affidavit of paternity attesting that he is the
biological father; and

(C) The husband executes an affidavit of nonpaternity
attesting that he is not the biological father; and

(D) Affidavits executed pursuant to the provisions of this
subdivision may be joint or individual or a combination thereof,
and each signature shall be individually notarized. If one of the
parties is an unemancipated minor, his or her parent or legal
guardian must also sign the respective affidavit.

(4) If the affidavits are executed as specified in subdivision
(3) of this section, or genetic tests as specified in subdivision
(2) of this section verify that the alleged father is the biological
father, the alleged father shall be shown as the father on the
certificate of live birth. Paternity established pursuant to
subdivision (2) or (3) of this section establishes the father for all legal purposes including, but not limited to, the establishment and enforcement of child support orders, and may be rescinded only by court order upon a showing of fraud, duress or material mistake of fact.

(5) Paternity may be established pursuant to subdivision (2) or (3) of this section only when the husband’s name does not appear as the father of a child on a registered and filed certificate of live birth and the affidavits or genetic tests are completed and submitted to the section of vital statistics within one year of the date of birth of the child.

(g) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father shall not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The affidavit may be joint or individual and each signature shall be individually notarized.

(h) A notarized affidavit of paternity, signed by the mother and the man to be named as the father, acknowledging that the man is the father of the child, legally establishes the man as the father of the child for all purposes, and child support may be established pursuant to the provisions of chapter forty-eight of this code.

(1) The notarized affidavit of paternity shall include filing instructions, the parties’ social security number and addresses and a statement that parties were given notice of the alternatives to, the legal consequences of, and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.
(2) The failure or refusal to include all information required
by subdivision (1) of this subsection shall not affect the validity
of the affidavit of paternity, in the absence of a finding by a
court of competent jurisdiction that it was obtained by fraud,
duress or material mistake of fact, as provided in subdivision
(4) of this subsection.

(3) The original notarized affidavit of paternity shall be
filed with the State Registrar. If a certificate of birth for the
child has been previously issued which is incorrect or incom-
plete, a new certificate of birth will be created and placed on
file. The new certificate of birth will not be marked
“Amended”.

(4) Upon receipt of any notarized affidavit of paternity
executed pursuant to this section, the State Registrar shall
forward a copy to the Bureau for Child Support Enforcement.

(5) An acknowledgment executed under the provisions of
this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment
shall file with the clerk of the circuit court of the county in
which the child resides a verified complaint stating the name of
the child, the name of the other parent, the date of the birth of
the child, the date of the signing of the affidavit of paternity,
and a statement that he or she wishes to rescind the acknowl-
edgment of the paternity. If the complaint is filed more than
sixty days from the date of execution of the affidavit of
paternity or the date of an administrative or judicial proceeding
relating to the child in which the signatory of the affidavit of
paternity is a party, the complaint shall include specific
allegations concerning the elements of fraud, duress or material
mistake of fact.

(B) The complaint shall be served upon the other parent as
provided in Rule 4 of the West Virginia Rules of Civil Proce-
dure.
152 (C) The family court judge shall hold a hearing within sixty days of the service of process upon the other parent.

154 (D) If the complaint was filed within sixty days of the date the affidavit of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact.

158 (E) If the complaint was filed more than sixty days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the court may set aside the acknowledgment only upon a finding, by clear and convincing evidence, that the affidavit of paternity was executed under circumstances of fraud, duress or material mistake of fact.

166 (F) The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the State Registrar by certified mail. The order shall state all changes to be made, if any, to the certificate of birth. The certificate of birth may not be marked “Amended.”

171 (i) In any case in which paternity of a child is determined by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

177 (j) If the father is not named on the certificate of birth, no other information about the father may be entered on the certificate.

180 (k) In order to permit the filing of the certificate of birth within the seven days prescribed in subsection (a) of this section, one of the parents of the child must verify the accuracy
of the personal data to be entered on the certificate. Certificates
of birth filed after seven days, but within one year from the date
of birth, will be registered on the standard form of the certifi-
cate of birth and will not be marked “Delayed.” The State
Registrar may require additional evidence in support of the
facts of birth for certificates filed after seven days from the date
of birth.

(l) In addition to the personal data furnished for the
certificate of birth issued for a live birth in accordance with the
provisions of this section, a person whose name is to appear on
the certificate of birth as a parent shall contemporaneously
furnish to the person preparing and filing the certificate of birth
the social security number or numbers issued to the parent. A
record of the social security number or numbers shall be filed
with the local registrar of the district in which the birth occurs
within seven days after the birth, and the local registrar shall
transmit the number or numbers to the State Registrar in the
same manner as other personal data is transmitted to the State
Registrar.

(m) The local registrar shall transmit by mail or an
approved electronic process each month to the county clerk of
each county the copies of the certificates of all births occurring
in the county or the data extracted therefrom, from which
copies the clerk shall compile records of the births and shall
create an index to the birth records that shall be a matter of
public record. The State Registrar shall prescribe the form of
the index of births.

§16-5-11. Registration of infants and minors born with specified
birth defects.

(a) When a live birth occurs, the physician or midwife in
attendance at, or present immediately after, the birth shall
examine the infant for any of the following birth defects:
(1) Anencephaly;
(2) Spina bifida;
(3) Hydrocephaly;
(4) Cleft palate;
(5) Total cleft lip;
(6) Esophageal atresia and atenosis;
(7) Rectal and anal atresia;
(8) Hypospadias;
(9) Reduction and deformity - upper limb;
(10) Reduction and deformity - lower limb;
(11) Congenital dislocation of the hip;
(12) Down’s syndrome;
(13) Visual impairments;
(14) Sickle cell anemia; and
(15) Others as may be requested by the commissioner.

(b) If any such impairment is found in an infant, or in any subsequent examination of any minor which has not been previously diagnosed, the examining physician, midwife or other health care provider licensed under chapter thirty of the code shall within thirty days of the examination make a report of the diagnosis to the State Registrar or other agency within the bureau as designated by the commissioner on forms provided by the bureau. The report shall include the name of the child, the name or names of the parents or parent or guardian,
a description of the impairment and other related information as specified by the commissioner.

(c) The information received by the State Registrar or other agency within the bureau as designated by the commissioner pursuant to this section pertaining to the identity of the persons named shall be kept confidential: Provided, That if consent of a parent, or of the guardian is obtained, the State Registrar or other agency within the bureau as designated by the commissioner may provide the information to federal, state, and local government agencies so that the information can be utilized to provide assistance or services for the benefit of the child.

§16-5-12. Notation on birth records of missing children.

(a) Upon receiving a report of the disappearance of any child born in this state, the State Registrar shall indicate in a clear and conspicuous manner in the child’s birth record or by an electronic process that the child has been reported as missing, including the title and location of the law-enforcement agency providing the report.

(b) Upon receiving a request for any birth records containing a report of the disappearance of any child, the State Registrar shall immediately notify the local law-enforcement agency which provided the missing child report. The State Registrar shall transmit any relevant information concerning the applicant’s identity, address and other pertinent data immediately to the relevant local law-enforcement agency.

(c) The State Registrar shall retain the original written request, or the details in an electronic format, until notified of the missing child’s recovery or the child attains the age of eighteen.

(d) Upon notification that any missing child has been recovered, the State Registrar shall remove the report of the disappearance from the child’s birth record.
§16-5-13. Registration of infants of unknown parentage.

(a) Whoever assumes the custody of a live-born infant of unknown parentage shall report, to the State Registrar, on a form and in a manner prescribed by the State Registrar, the following information:

(1) The date and city or county, or both, of finding;
(2) Sex and approximate birth date of child;
(3) Name and address of the person with whom or the institution with which the child has been placed for care;
(4) Name given to the child by the custodian of the child; and
(5) Other data required by the State Registrar.

(b) The place where the child was found shall be entered as the place of birth.

(c) A report registered under this section shall constitute the certificate of birth for the child.

(d) If the child is identified and a certificate of birth is found or obtained, the report registered under this section shall be placed in a special file and may not be subject to inspection except upon order of a court of competent jurisdiction or as provided by rule.

§16-5-14. Delayed registration of births.

(a) The State Registrar may register a delayed certificate of birth in accordance with a legislative rule to be promulgated by the department, which rule will provide for qualifications for applicants and the evidentiary documentation required. The rule may provide for the dismissal of an application which is not actively pursued.
When a certificate of birth of a person born in West Virginia has not been filed within one year, a delayed certificate of birth may be filed in accordance with the legislative rule.

(c) A certificate of birth registered one year or more after the date of birth shall be registered on a delayed certificate of birth form. The delayed certificate of birth will show on its face the date of registration and will contain a summary statement of the evidentiary documentation submitted in support of the delayed registration.

(d) A delayed certificate of birth may not be registered for a deceased person.

(e) If the evidentiary documentation required is not filed with the application for a delayed registration of birth or the State Registrar has cause to question the validity or adequacy of the evidentiary documentation, the State Registrar may not register the delayed certificate of birth and shall advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

(f) In addition to the required documentation and other data furnished in an application for a delayed registration of birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish with the application the social security number or numbers issued to the parent.


(a) If the State Registrar refuses to file a certificate of birth under the provisions of section ten or section fourteen of this article, a petition signed and sworn to by the petitioner may be filed in the circuit court of the county in which the petitioner resides or in the circuit court of Kanawha County for an order
establishing a record of the date and place of the birth and the
parentage of the person whose birth is to be registered.

(b) The petition may be made on a form prescribed and
furnished or approved by the State Registrar, and must allege:

(1) That the person for whom a certificate of birth is sought
was born in this state;

(2) That no certificate of birth can be found in the section
of vital statistics or the office of any local custodian of
certificates of birth;

(3) That diligent efforts by the petitioner have failed to
obtain the evidence required in accordance with section ten or
section fourteen of this article and of any rules promulgated
pursuant to this article;

(4) That the State Registrar has refused to register a
certificate of birth; and

(5) Such other allegations as may be required.

c) The petition must be accompanied by a copy of the
statement of the State Registrar made in accordance with
section ten or section fourteen of this article and by copies of all
evidentiary documentation which was submitted to the State
Registrar in support of the registration.

d) The court shall fix a time and place for hearing the
petition and shall give the State Registrar not less than twenty
days’ notice of the hearing. The State Registrar, or his or her
authorized representative, may appear and testify in the
proceeding.

e) If the court finds from the evidence presented that the
person for whom a certificate of birth is sought was born in this
state, it shall make findings as to the place and date of birth,
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parentage, and other findings as may be required and shall issue
an order, on a form prescribed and furnished or approved by the
State Registrar, to establish a record of birth. This order shall
include the birth data to be registered, a description of the
evidence presented, and the date of the court’s action.

(f) The clerk of the court shall forward each order establish-
ing a record of birth to the State Registrar not later than the
tenth day of the calendar month following the month in which
it was entered. The State Registrar shall register the order,
which shall constitute the court order certificate of birth.

(g) Any order is final unless reversed, vacated or modified
on appeal, and any appeal must be sought in the manner and
within the time provided by law for appeals in other civil cases.

(h) In addition to the evidence presented to establish a court
order certificate of birth in accordance with the provisions of
this section, a person whose name is to appear on the court
order certificate of birth as a parent shall furnish to the clerk of
the circuit court the social security number or numbers issued
to the parent. A record of the social security number or numbers
shall be forwarded to the State Registrar along with the order
establishing a court order certificate of birth.


(a) When a court of competent jurisdiction has entered an
order of adoption in this state, it shall require the preparation of
a certificate of adoption on a form prescribed and furnished by
the State Registrar. The certificate of adoption shall be certified
by the clerk of the court and shall provide:

1. Facts necessary to locate and identify the certificate of
birth of the person adopted or, in the case of a person who was
born in a foreign country, evidence from sources determined to
be reliable by the court as to the date and place of birth;
(2) Information necessary to establish a new certificate of birth of the person adopted; and

(3) Information sufficient to identify the order of adoption.

(b) Each petitioner shall furnish the information necessary to prepare the certificate of adoption. The court may require any social service or welfare agency or any person having knowledge of the facts to provide the additional information as may be necessary to complete the certificate of adoption.

(c) Whenever an order of adoption is amended, vacated or annulled, the clerk of the court shall prepare a report, which shall include the facts necessary to identify the original certificate of adoption and the facts in the new order necessary to amend the birth record.

(d) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the State Registrar certificates of adoption and reports of annulments or amendments entered in the preceding month, together with the related reports as the State Registrar shall require.

(e) When the State Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of an order of adoption for a person born in a state other than West Virginia, he or she shall forward the certificate or report to the State Registrar in the state of birth.

(f) When the State Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of an order of adoption for a person born in a foreign country, and the person was not a citizen of the United States at the time of birth, the State Registrar shall prepare a "Certificate of Foreign Birth" as provided by subsection (h), section eighteen of this article. If the person was born in Canada, the State Registrar shall send a copy of the certificate of adoption, report of annulment of...
adoption, or amendment of an order of adoption to the registration authority in Canada.

(g) When the State Registrar receives a certificate of adoption, report of annulment of adoption, or amendment of order of adoption for a person born in a foreign country who was a citizen of the United States at the time of birth, the State Registrar may not prepare a “Certificate of Foreign Birth” but shall notify the adoptive parents or the registrant of the procedures for obtaining a revised certificate of birth through the United States Department of State.

(h) In addition to the information furnished in accordance with subsection (b) of this section, each person whose name is to appear on the certificate of adoption as a parent, whether as an adoptive parent or as a natural parent who joins in the adoption without relinquishing parental rights, shall furnish to the clerk of the circuit court the social security number or numbers issued to the parent. A record of the social security number or numbers shall be forwarded to the State Registrar along with the certificate of adoption, as provided in subsection (d) of this section.

§16-5-17. Court reports of determination of paternity.

(a) When a court of competent jurisdiction has entered an order of paternity, the petitioner shall provide the information necessary for the clerk of the court to complete and certify a certificate of paternity on a form prescribed and furnished by the State Registrar. The certificate of paternity shall provide:

(1) Facts necessary to locate and identify the certificate of birth of the person whose paternity is determined;

(2) Information necessary to establish a new certificate of birth of the person whose paternity is determined; and

(3) Information sufficient to identify the order of paternity.
(b) Not later than the tenth day of each calendar month, the clerk of the court shall forward to the State Registrar certificates of paternity entered in the preceding month, together with related reports as the State Registrar shall require.

(c) In addition to providing the information necessary to establish a new certificate of birth of the person whose paternity has been determined, a person whose name is to appear on the certificate of paternity as a parent shall furnish to the clerk of the circuit court the social security number or numbers issued to the parent. A record of the social security number or numbers shall be forwarded to the State Registrar along with the certificate of paternity, as provided in subsection (b) of this section.

§16-5-18. Certificates of birth following adoption, legitimation, paternity acknowledgment and court determination of paternity.

(a) The State Registrar shall establish a new certificate of birth for a person born in West Virginia when he or she receives the following:

(1) A certificate of adoption as provided in section sixteen of this article or a certificate of adoption prepared and filed in accordance with the laws of another state, or a certified copy of the order of adoption, together with the information necessary to identify the original certificate of birth and to establish a new certificate of birth; or

(2) A request that a new certificate be established as prescribed by legislative rule, based upon evidence that:

(A) The person for whom the certificate is sought has been legitimated;

(B) A court of competent jurisdiction has determined the paternity of the person; or
(C) Both parents have acknowledged the paternity of the person.

(b) A new certificate of birth shall show the actual city, county and date of birth, if known, and shall be substituted for the original certificate of birth on file. The original certificate of birth and the evidence of adoption, legitimation, court determination of paternity, or affidavit of paternity may not be inspected except for the administration of the system of vital statistics or the Bureau for Child Support Enforcement, or upon order of a court of competent jurisdiction, or, in the case of an affidavit of paternity, the signatories to the affidavit or the adult subject of the affidavit, or as provided by legislative rule or as otherwise provided by state law.

(c) Upon receipt of a report of an amended order of adoption, the State Registrar shall amend the certificate of birth as provided by legislative rule.

(d) Upon receipt of a report or order of annulment of adoption, the State Registrar shall restore the original certificate of birth to its place in the files and the new certificate and evidence may not be inspected except for the administration of the system of vital statistics or Bureau for Child Support Enforcement, or upon order of a court of competent jurisdiction, or as provided by legislative rule or as otherwise provided by state law.

(e) Upon receipt of a written request and a sworn affidavit of paternity signed by both parents of a child born out of wedlock, the State Registrar shall place the name of the father on the certificate of birth and, if the child is under the age of eighteen and at the request of the parents, change the surname of the child in the manner prescribed by legislative rule.

(f) If no certificate of birth is on file for the person for whom a new certificate of birth is to be established under this
section, a delayed certificate of birth must be filed with the State Registrar as provided in section fourteen or fifteen of this article before a new certificate of birth is established, except that when the date and place of birth and parentage have been established by a court of competent jurisdiction, a delayed certificate is not required.

(g) When a new certificate of birth is established by the State Registrar, all copies of the original certificate of birth in the custody of any other custodian of vital records in this state shall be sealed from inspection or forwarded to the State Registrar, as he or she shall direct.

(h) Upon receipt of the documentation set forth in subdivision (1) of this subsection, the State Registrar shall prepare and register a certificate in this state for a person born in a foreign country who is not a citizen of the United States and who was adopted through a court of competent jurisdiction in this state.

(1) The State Registrar shall establish the certificate upon receipt of:

(A) A certificate of adoption from the court ordering the adoption;

(B) Proof of the date and place of the child’s birth; and

(C) A request that the certificate be prepared, from the court, the adopting parents, or the adopted person if he or she has attained the age of eighteen years.

(2) The certificate shall be labeled “Certificate of Foreign Birth” and shall show the actual country of birth. The certificate shall include a statement that it is not evidence of United States citizenship for the person for whom it is issued.

(3) After registration of the certificate of birth in the new name of the adopted person, the State Registrar shall seal and
file the certificate of adoption, which may not be inspected except for the administration of the system of vital statistics, or upon order of a court of competent jurisdiction, or as provided by legislative rule or as otherwise provided by state law.

§16-5-19. Death registration.

(a) A certificate of death for each death which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the State Registrar, within five days after death, and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown, but the dead body is found in this state, the place where the body was found shall be shown as the place of death.

(2) If the date of death is unknown, it shall be approximated. If the date cannot be approximated, the date found shall be shown as the date of death.

(3) If death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where it is first removed shall be considered the place of death.

(4) If death occurs in a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state but the certificate shall show the actual place of death insofar as can be determined.

(5) In all other cases, the place where death is pronounced shall be considered the place where death occurred.

(b) The funeral director or other person who assumes custody of the dead body shall: (1) Obtain the personal data
from the next of kin or the best qualified person or source available including the deceased person’s social security number or numbers, which shall be placed in the records relating to the death and recorded on the certificate of death;

(2) Within forty-eight hours after death, provide the certificate of death containing sufficient information to identify the decedent to the physician responsible for completing the medical certification as provided in subsection (c) of this section; and

(3) Upon receipt of the medical certification, file the certificate of death: Provided, That for implementation of electronic filing of death certificates, the person who certifies to cause of death will be responsible for filing the electronic certification of cause of death as directed by the State Registrar and in accordance with legislative rule.

(c) The medical certification shall be completed and signed within twenty-four hours after receipt of the certificate of death by the physician in charge of the patient’s care for the illness or condition which resulted in death except when inquiry is required pursuant to chapter sixty-one, article twelve or other applicable provisions of this code.

(1) In the absence of the physician or with his or her approval, the certificate may be completed by his or her associate physician, any physician who has been placed in a position of responsibility for any medical coverage of the decedent, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, provided inquiry is not required pursuant to chapter sixty-one, article twelve of this code.

(2) The person completing the cause of death shall attest to its accuracy either by signature or by an approved electronic process.
(d) When inquiry is required pursuant to article twelve, chapter sixty one, or other applicable provisions of this code, the State Medical Examiner or designee or county medical examiner or county coroner in the jurisdiction where the death occurred or where the body was found shall determine the cause of death and shall complete the medical certification within forty-eight hours after taking charge of the case.

(1) If the cause of death cannot be determined within forty-eight hours after taking charge of the case, the medical examiner shall complete the medical certification with a “Pending” cause of death to be amended upon completion of medical investigation.

(2) After investigation of a report of death for which inquiry is required, if the State Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the State Medical Examiner or designee or county medical examiner or county coroner may direct the decedent’s family physician or the physician who pronounces death to complete the certification of death: Provided, That the physician is not civilly liable for inaccuracy or other incorrect statement of death unless the physician willfully and knowingly provides information he or she knows to be false.

(e) When death occurs in an institution and the person responsible for the completion of the medical certification is not available to pronounce death, another physician may pronounce death. If there is no physician available to pronounce death, then a designated licensed health professional who views the body may pronounce death, attest to the pronouncement by signature or an approved electronic process, and, with the permission of the person responsible for the medical certification, release the body to the funeral director or other person for final disposition: Provided, That if the death occurs in an institution during court-ordered hospitalization, in a correc-
tional facility or under custody of law-enforcement authorities, the death shall be reported directly to a medical examiner or coroner for investigation, pronouncement and certification.

(f) If the cause of death cannot be determined within the time prescribed, the medical certification shall be completed as provided by legislative rule. The attending physician or medical examiner, upon request, shall give the funeral director or other person assuming custody of the body notice of the reason for the delay, and final disposition of the body may not be made until authorized by the attending physician, medical examiner or other persons authorized by this article to certify the cause of death.

(g) Upon receipt of autopsy results, additional scientific study, or where further inquiry or investigation provides additional information that would change the information on the certificate of death from that originally reported, the certifier, or any State Medical Examiner who provides such inquiry under authority of article twelve, chapter sixty-one of this code shall immediately file a supplemental report of cause of death or other information with the section of vital statistics to amend the record, but only for purposes of accuracy.

(h) When death is presumed to have occurred within this state but the body cannot be located, a certificate of death may be prepared by the State Registrar only upon receipt of an order of a court of competent jurisdiction which shall include the finding of facts required to complete the certificate of death. The certificate of death will be marked “Presumptive” and will show on its face the date of death as determined by the court and the date of registration, and shall identify the court and the date of the order.

(i) The local registrar shall transmit each month to the county clerk of his or her county a copy of the certificates of all deaths occurring in the county, and if any person dies in a
county other than the county within the state in which the
person last resided prior to death, then the State Registrar shall
furnish a copy of the death certificate to the clerk of the county
commission of the county where the person last resided, from
which copies the clerk shall compile a register of deaths, in a
form prescribed by the State Registrar. The register shall be a
public record.

§16-5-20. Delayed registration of death.

(a) When a death occurring in this state has not been
registered within the time period described by section nineteen
of this article, a certificate of death may be filed subject to
evidentiary documentation and other requirements as prescribed
by legislative rule.

(b) If the required evidentiary documentation is not filed
with the application for a delayed registration of death or the
State Registrar has cause to question the validity or adequacy
of the evidentiary documentation, the State Registrar may not
register the delayed certificate of death and shall advise the
applicant of his or her right to seek an order from a court of
competent jurisdiction.

(c) A certificate of death registered one year or more after
the date of death shall be marked “Delayed” and shall show on
its face the date of the delayed registration.

§16-5-21. Reports of fetal death.

(a) Each fetal death of three hundred fifty grams or more,
and if weight is unknown, of twenty completed weeks of
gestation or more, calculated from the date the last normal
menstrual period began to the date of delivery, which occurs in
this state, shall be reported within five days after delivery to the
section of vital statistics or as otherwise directed by the State
Registrar.
(1) When a fetal death occurs, the person in charge of the institution or his or her designated representative shall prepare and file the report. In obtaining the information required by the report, all institutions shall use information gathering procedures, including worksheets, provided or approved by the State Registrar.

(2) When a fetal death occurs, the physician in attendance at or immediately after delivery shall prepare and file the report.

(3) When inquiry is required pursuant to article twelve, chapter sixty-one, or other applicable provisions of this code, the State Medical Examiner or designee or county medical examiner or county coroner shall investigate the cause of fetal death and shall prepare and file the report within five days. If after investigation, the State Medical Examiner or designee or county medical examiner or county coroner decline jurisdiction, the person declining jurisdiction may direct the local health officer to investigate the cause of fetal death and prepare and file the report.

(4) When a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this state, the place where the fetus was first removed from the conveyance will be considered the place of fetal death.

(b) When a fetus is found in this state and the place of death is unknown, the fetal death shall be recorded in this state, and the place where the fetus was found will be considered the place of fetal death.

§16-5-22. Reports of induced termination of pregnancy.

(a) Each induced termination of pregnancy which occurs in this state, regardless of the length of gestation, shall be reported to the section of vital statistics no later than the tenth day of the month following the month the procedure was performed by the
person in charge of the institution in which the induced
termination of pregnancy was performed. If the induced
termination of pregnancy was performed outside an institution,
it shall be reported by the attending physician. The State
Registrar shall prepare a form or provide a suitable electronic
process for the transmission of the reports from the institution
or physician to the section of vital statistics. Information to be
collected shall include:

(1) The gestational age of the fetus;

(2) The state and county of residence of the woman;

(3) The age of the woman;

(4) The type of medical or surgical procedure performed;

(5) The method of payment for the procedure;

(6) Whether birth defects were known, and if so, what birth
defects; and

(7) Related information as required by the commissioner,
other applicable sections of this code, or by the legislative rule:

Provided, That:

(A) No personal identifiers, including, but not limited to,
name, street address, city, zip code, or social security number,
will be collected; and

(B) Individual records may only be released for research
purposes as approved by the State Registrar and may be
released in a format designed to further protect the confidential-
ity of the woman as the State Registrar deems necessary.

(b) An analysis of the compiled information relating to
induced terminations of pregnancy shall be included in the
annual report of vital statistics.
§16-5-23. Authorization for disposition and disinterment and reinterment permits.

(a) The funeral director or other person who assumes custody of a dead body shall obtain authorization prior to final disposition of the body.

(1) The physician or State Medical Examiner, county medical examiner or designee shall authorize final disposition of the body on a form or in a format prescribed by the State Registrar.

(2) If the body is to be cremated, authorization for cremation must be obtained from the State Medical Examiner, county medical examiner or county coroner on a form or in a format prescribed by the State Medical Examiner’s office.

(b) Prior to final disposition of a fetus, irrespective of the duration of pregnancy, the funeral director, the person in charge of the institution, or other person assuming responsibility for final disposition of the fetus shall obtain from a parent authorization for final disposition on a form or in a format prescribed by the State Registrar.

(c) With the consent of the physician or State Medical Examiner or county medical examiner or designee who is to certify the cause of death, a dead body may be moved from the place of death for the purpose of being prepared for final disposition.

(d) An authorization for disposition issued under the law of another state which accompanies a dead body or fetus brought into this state shall be authority for final disposition of the body or fetus in this state.

(e) No sexton or other person in charge of any place in which interment or other disposition of dead bodies is made may inter or allow interment or other disposition of a dead body
or fetus unless it is accompanied by authorization for final disposition.

(f) Each person in charge of any place for final disposition shall return all authorizations to the funeral director or person acting as such within ten days after the date of disposition and shall indicate the date of disposition on the authorization.

(g) Each person in charge of any place for final disposition shall keep a record of all bodies interred or otherwise disposed of on the premises under his or her charge. The record must contain the name of the deceased person, place of death, date of burial or disposal, name and address of the funeral director or person acting for him or her, and other information as may be required by legislative rule. The record shall at all times be open to official inspection.

(h) When there is no person in charge of the place for final disposition, the funeral director or person acting as such shall complete the authorization and write across the face of the authorization “No person in charge.”

(i) Not later than the tenth day of each month, the funeral director or person acting as such shall transmit to the State Registrar, in the state where the death occurred, all authorizations received during the month.

(j) Authorization for disinterment and reinterment is required prior to disinterment of a dead body or fetus, except as authorized by legislative rule or otherwise provided by law or by order of a court of competent jurisdiction. The authorization must be issued by the local registrar to a licensed funeral director, embalmer, or other persons acting on their behalf, upon proper application.

§16-5-24. Extension of time for filing certificates, reports and authorizations.
(a) The department shall, by legislative rule, provide for the extension of the time periods prescribed in sections nineteen, twenty-one, twenty-two and twenty-three of this article for the filing of certificates of death, reports of fetal death, reports of induced termination of pregnancy, medical certifications of the cause of death, and for obtaining authorization for disposition, in cases in which compliance with the applicable prescribed period would result in undue hardship.

(b) The legislative rules shall provide for the authorization for disposition under section twenty-three of this article prior to the filing of a certificate of death in circumstances in which compliance with the requirement that the certificate be filed prior to the issuance of the permit would result in undue hardship.

§16-5-25. Correction and amendment of vital records.

(a) In order to protect the integrity and accuracy of vital records, a certificate or report registered under this article may be amended only in accordance with the provisions of this article or legislative rule.

(b) A certificate or report that is amended under this section must indicate that it has been amended, except as otherwise provided in this section or by legislative rule: Provided, That the department shall prescribe by legislative rule the conditions under which additions or corrections of minor deficiencies, including, but not limited to, the omission or misspelling of a first name, may be made to certificates or records within one year of the event without the certificate indicating that it has been amended.

(c) The State Registrar shall maintain a record which identifies the evidence upon which the amendment was based, the date of amendment, and the identity of the person making the amendment.
(d) Upon receipt of a certified copy of a court order of a court of competent jurisdiction changing the name of a person born in this state, and upon request of the person whose name is to be changed or his or her parent, guardian or legal representative, the State Registrar shall amend the certificate of birth to reflect the new name.

(e) If the required evidentiary documentation is not filed with the application for amending a vital record or the State Registrar has cause to question the validity or adequacy of the evidentiary documentation, the State Registrar may not amend the vital record and shall advise the applicant of his or her right to seek an order from a court of competent jurisdiction.

(f) When the State Registrar amends a certificate or report, he or she shall report the amendment to any other custodian of the vital record.

(g) When an amendment is made to a certificate of marriage or record of divorce or annulment, the local official issuing the marriage license or the court ordering the divorce or annulment shall forward copies of the amendment to the State Registrar.

(h) In addition to providing the information necessary to amend a certificate or record, a person whose name is to appear on the amended certificate as a parent shall furnish the social security number or numbers, issued to the parent, which must be forwarded to the State Registrar along with the information required for the amended certificate.


To preserve vital records and other original documents, the State Registrar is authorized to prepare typewritten, photographic, electronic, or other reproductions of certificates or reports and files in the section of vital statistics. When verified
and approved by the State Registrar, the reproductions shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by legislative rule or other provisions of state law.

§16-5-27. Disclosure of information from vital records or vital reports.

In accordance with section twenty-six of this article and the legislative rules promulgated thereunder:

(a) The department shall, by legislative rule, provide for the disclosure of confidential information contained in vital records and reports for statistical research purposes. The legislative rule must require the submission of written requests for information and the execution of research agreements between the researcher and the State Registrar or local custodian of vital records and reports, which prohibit the release by the researcher of any information that may identify any person except as provided in the agreement.

(b) To protect the integrity and to ensure the proper use of vital records or reports, and to ensure the efficient and proper operation of the system of vital statistics, it shall be unlawful for any person to permit inspection of, or to disclose, confidential information contained in vital records or reports, or to copy or issue a copy of all or part of any vital record or report unless authorized by this article, by legislative rule or by order of a court of competent jurisdiction: Provided, That nothing in this article prohibits the release of information or data that would not identify any person named in a vital record or report.

(c) Appeals from decisions of the custodians of permanent local records refusing to disclose confidential information, or to permit inspection of or copying of confidential information under the authority of this section and legislative rules shall be made to the State Registrar, whose decisions shall be binding upon the local custodians of permanent local records.
(d) When one hundred years have elapsed after the date of birth, or fifty years have elapsed after the date of death, fetal death, marriage, or divorce or annulment, the records of these events in the custody of the State Registrar and local custodians shall, become available to the public without restriction unless otherwise prohibited or restricted by law, except for the release of social security numbers recorded on certificates or reports of birth, marriage, fetal death, or divorce, in accordance with legislative rule: Provided, That confidential information contained in the “Information for Medical and Health Use Only” section of the certificate of birth or report of fetal death shall never become available to the public.

(e) The federal agency responsible for national vital statistics may be furnished copies of records, reports, or data from the system of vital statistics as it may require for national statistics. The department shall enter into an agreement with the federal agency indicating the statistical or research purposes for which records, reports, or data may be used, and setting forth the support to be provided by the federal agency for the collection, processing and transmission of the records, reports or data. Upon written request, the State Registrar may approve, in writing, additional statistical or research uses of the records, reports or data supplied under the agreement.

(f) The State Registrar may furnish copies of records or data from the system of vital statistics to federal, state and local governmental agencies, provided that the copies or data are used solely in the conduct of their official duties.

(g) The State Registrar may, by agreement, transmit copies of records and other reports required by this article to offices of vital statistics outside this state when the records or other reports relate to residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used.
and must provide instructions for the proper retention and disposition of the copies. Copies received by the section of vital statistics from offices of vital statistics in other states must be handled in the same manner as prescribed in this section.

§16-5-28. Copies from the system of vital statistics.

In accordance with section twenty-seven of this article and the legislative rules promulgated thereunder:

(a) The State Registrar and other custodians of vital records authorized to issue certified copies shall upon receipt of an application, issue a certified copy of a vital record in his or her custody to the registrant, his or her parents, spouse, adult children, grandchildren or great-grandchildren, legal guardian, or their respective authorized representative. Others may be authorized to obtain certified copies when they demonstrate that the record is needed for the determination or protection of his or her personal or property right. The department may promulgate rules to further define others who may obtain copies of vital records filed under this article.

(b) All forms and procedures used in the issuance of certified copies of vital records in the state shall be approved by the State Registrar. All certified copies of certificates of birth issued shall have security features that deter the document from being altered, counterfeited, duplicated or simulated without ready detection in compliance with regulations issued by the federal government.

(c) Each copy or abstract issued shall show the date of registration, and copies or abstracts issued from records marked “Amended” shall be similarly marked and, when possible, show the effective date of the amendment. Copies issued from records marked “Delayed” shall be similarly marked and shall include the date of registration and a description of the evidence used to establish the delayed certificate. Any copy issued of a
“Certificate of Foreign Birth” shall indicate the foreign birth and show the actual place of birth and the statement that the certificate is not proof of United States citizenship for the person for whom it is issued.

(d) A certified copy of a vital record issued in accordance with this section shall be considered for all purposes the same as the original, and shall be prima facie evidence of the facts stated in the record: Provided, That the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, or a certificate of foreign birth, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(e) Nothing in this section shall be construed to permit disclosure of information contained in the “Information for Medical and Health Use Only” section of the certificate of birth or the “Information for Statistical Purposes Only” section of the certificate of marriage or certificate of divorce or annulment unless specifically authorized by the State Registrar for statistical or research purposes. This information is not subject to subpoena or court order and is not admissible before any court, tribunal, or judicial body. Information collected for administrative use may not be included on certified copies of records, and may be disclosed only for administrative, statistical, or research purposes authorized by state or federal law and legislative rule.

(f) When the State Registrar receives information that a certificate may have been registered through fraud or misrepresentation, he or she may withhold issuance of any copy of that certificate.

(1) The State Registrar shall inform the registrant or the registrant’s authorized representative of the right to request a hearing by the commissioner.
(2) The secretary of the department may authorize the State Registrar or another person to hold an investigation or hearing to determine if fraud or misrepresentation has occurred.

(3) If upon conclusion of a hearing or investigation no fraud or misrepresentation is found, copies may be issued.

(4) If fraud or misrepresentation is found by a preponderance of the evidence, the State Registrar shall remove the certificate from the file. The certificate and evidence will be retained but will not be subject to inspection or copying except upon order of a court of competent jurisdiction or by the State Registrar for purposes of prosecution or administration of the system of vital statistics.

(g) No person may prepare or issue any certificate which purports to be an original, certified copy, or copy of a vital record, except as authorized by this article, or by legislative rule.

§16-5-29. Fees for copies and searches.

(a) The commissioner shall prescribe the fees to be charged and collected by the State Registrar for certified copies of certificates or records, not to exceed ten dollars per copy, or for a search of the files or records when no copy is made: Provided, That the fee may be increased to a maximum of twelve dollars per copy, at the discretion of the commissioner, after the first day of July, two thousand eight.

(b) The commissioner may prescribe additional fees for the priority production or express delivery of certified copies.

(c) The State Registrar may furnish certified copies of birth and death records to state agencies and to organized charities free of charge when the certificates are needed in presenting claims to the federal government or to a state for public
assistance. The State Registrar will keep a record of all
certificates furnished pursuant to this subsection.

(d) Subject to the provisions set forth in section two, article
two, chapter twelve of this code, there is hereby continued in
the State Treasury a separate account which shall be designated
“the vital statistics account.”

(e) After the first day of July, two thousand six, and subject
to the provisions set forth in section two, article two, chapter
twelve of this code, there is established in the State Treasury a
separate account which shall be designated “the vital statistics
improvement fund.” Funds deposited in this account will be
used to modernize and automate the system of vital statistics in
this state and may not be used to supplant existing funding
necessary for the daily operation of the system of vital statistics.
Funds in this account will be retained in a nonlapsing fund for
the improvement of the system of vital statistics.

(f) The commissioner shall deposit one dollar received
under the provisions of this section for each certified copy to
the “vital statistics improvement fund” and shall deposit four
dollars received under the provisions of this section for each
certified copy to the general revenue fund account. The
commissioner shall deposit the remainder of all fees received
under the provisions of this section for certified copies and for
priority production and express delivery to the vital statistics
account.

(g) The commissioner is authorized to expend the moneys
deposited in the vital statistics account in accordance with the
laws of this state as necessary to implement this article. The
Legislature shall appropriate all moneys in the vital statistics
account as part of the annual state budget.

(h) The commissioner shall make an annual report to the
Legislature on the vital statistics account, including the
§16-5-30. Persons required to keep records.

(a) Every person in charge of an institution as defined in this article shall keep a record of personal data concerning each person admitted or confined to the institution. The record must include information required for the certificates of birth and death and the reports of fetal death required by this article. The record shall be made at the time of admission from information provided by the person being admitted or confined, but when it cannot be so obtained, the information will be obtained from relatives or other persons acquainted with the facts. The name and address of the person providing the information will be included in the record.

(b) When a dead body or fetus is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the decedent, date of death, name and address of the person to whom the body or fetus is released, and date of removal from the institution. If final disposition is made by the institution, the date, place and manner of disposition will be recorded.

(c) A funeral director, embalmer, sexton or other person who removes from the place of death or transports or makes final disposition of a dead body or fetus, in addition to filing any certificate or other report required by this article or legislative rule, shall keep a record which identifies the body, and information as required by legislative rule pertaining to the receipt, removal, delivery, and burial or cremation of the body.

(d) Records maintained under this section must be retained for at least three years and must be made available for inspection by the State Registrar or his or her representative upon request.
§16-5-31. Duty to furnish information relative to vital events.

(a) Any person or institution required under this article to collect and maintain information regarding any birth, death, fetal death, marriage, or divorce or annulment, shall furnish the information to the State Registrar upon request.

(b) Any person or institution that in good faith provides information required by this article or legislative rules shall not be subject to criminal prosecution or any action for damages.

(c) Not later than the tenth day of the month following the month of occurrence, the administrator of each institution shall send to the section of vital statistics a list showing all births, deaths and fetal deaths occurring in that institution during the preceding month, on forms provided or approved by the State Registrar.

(d) Not later than the tenth day of the month following the month of occurrence, each funeral director shall send to the section of vital statistics a list showing all dead bodies embalmed or otherwise prepared for final disposition, or dead bodies finally disposed of, by the funeral director during the preceding month, on forms provided or approved by the State Registrar.

§16-5-32. Matching of birth and death certificates.

To protect the integrity of vital records and to prevent the fraudulent use of certificates of birth of deceased persons, the State Registrar is authorized to match certificates of birth and death, in accordance with legislative rule which requires that the fact of death and the matching identities be determined with reasonable certainty and to post the fact of death to the appropriate birth certificate. Copies issued from certificates of birth marked deceased shall be similarly marked.
§16-5-33. Limitation on use of social security numbers.

(a) A social security number obtained in the filing of a certificate of live birth, an application for a delayed registration of birth, a judicial order establishing a record of birth, an order of adoption, an affidavit of paternity or a judicial order establishing paternity, or any other record may not be transmitted to the clerk of the county commission.

(b) No social security number may appear upon the public record of the index of births or upon any certificate of birth registration issued by the State Registrar, local registrar, county clerk or any other issuing authority.

(c) The State Registrar may make social security numbers available to the Bureau for Child Support Enforcement upon its request, to be used solely in connection with the enforcement of child support orders.

(d) The section of vital statistics may utilize social security numbers in accordance with legislative rules of the department, as allowed by or to meet the requirements of federal regulations.

§16-5-34. Uniform system of registration of marriage, divorce and annulment of marriage.

(a) To encourage an efficient and uniform system of registration of marriage, divorce and annulment of marriage may be established in this state, the State Registrar shall provide for the registration of each marriage, divorce and annulment of marriage which occurs in this state.

(b) The commissioner may, subject to legislative rule:

(1) Install a statewide system of registering, indexing, and preserving records of marriage, divorce and annulment of marriage;
(2) Give instructions, and prescribe and furnish forms, for collecting, transcribing, compiling and preserving records and statistics of marriage, divorce and annulment of marriage; and

(3) Make and publish a statistical report of marriage, divorce and annulment of marriage in this state.

§16-5-35. Registration of marriages.

(a) On or before the tenth day of each month, the county clerk of each county shall forward to the State Registrar a report of all marriage records made by him or her during the previous month, on a form prescribed or furnished by the State Registrar.

(b) The State Registrar shall preserve and index all records received under the provisions of this section and shall upon request issue a certified copy of the records, which shall be prima facie evidence of the facts stated in the certified copies in all courts in this state.

§16-5-36. Registration of divorces and annulments of marriages.

(a) On and after the first day of July, 2006, a record of each divorce or annulment ordered by any court of competent jurisdiction in this state shall be filed by the clerk of the court with the section of vital statistics, and shall be registered if it has been completed and filed in accordance with this section. The record shall be prepared by the petitioner or his or her legal representative in the form prescribed or furnished by the State Registrar and shall be presented to the clerk of the court with the petition.

(b) The clerk of the court shall complete and certify each record. On or before the tenth day of each calendar month, the clerk shall forward to the section of vital statistics the records of each divorce or annulment order entered during the preceding calendar month.
(c) Failure of the clerk of the court to comply with the provisions of this section does not affect the validity of any order of divorce or annulment of marriage.

(d) The State Registrar shall preserve and index all records received under provisions of this section and shall upon request issue certified copies of the records, which shall be prima facie evidence of the facts stated in the certified copies in all courts in this state.

§16-5-37. Applicability to previously received certificates and reports.

The provisions of this article apply to all certificates of birth, death, marriage and divorce or annulment, reports of fetal death and induced terminations of pregnancy previously received by the section of vital statistics and in the custody of the State Registrar or any other custodian of vital records.

§16-5-38. Penalties.

(a) For acts which occur on or after the effective date of this section, a person shall be guilty of a felony and, upon conviction thereof, shall be fined not more than ten thousand dollars or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned, if he or she:

(1) Willfully and knowingly makes any false statement in a report, record or certificate required to be filed under this article, or in an application for an amendment thereof, or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record or certificate, or amendment thereof, or in an application for a certified copy of a vital record required by this article; or

(2) Without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends or mutilates any record,
report, or certificate required by this article, or any certified
copy of the record, report or certificate; or

(3) Willfully and knowingly obtains, possesses, uses, sells,
furnishes or attempts to obtain, possess, use, sell or furnish to
another, for any purpose of deception, any certificate, record,
report, or certified copy required by this article, which was
made, counterfeited, altered, amended, or mutilated, or that is
false, in whole or in part, or that relates to the birth of another
person, whether living or deceased; or

(4) Is an employee of the section of vital statistics or of any
office of any custodian of vital records, and willfully and
knowingly furnishes or processes a certificate of birth, or
certified copy of a certificate of birth, with the knowledge or
intention that it be used for the purposes of deception; or

(5) Without lawful authority, possesses any certificate,
record or report required by this article or a copy or a certified
copy of the certificate, record or report knowing it to have been
stolen or otherwise unlawfully obtained.

(b) A person shall be guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than one thousand
dollars, or confined in jail not more than one year, or both fined
and confined, if he or she:

(1) Willfully and knowingly transports or accepts for
transportation, interment or other disposition a dead body
without an accompanying permit as provided in this article;

(2) Willfully and knowingly refuses to provide information
required by this article or legislative rules adopted pursuant to
this article; or

(3) Willfully and knowingly violates any of the provisions
of this article or refuses to perform any of the duties imposed
upon him or her by this article.
AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to designation of streams as waters of special concern; and clarifying current law requiring legislative approval of final designation of streams of special concern.

Be it enacted by the Legislature of West Virginia:

That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of anti-degradation procedures.

(a) All authority to promulgate rules and implement water quality standards vested in the Environmental Quality Board is hereby transferred from the Environmental Quality Board to the secretary of the department of Environmental Protection as of the effective date of the amendment and reenactment of this section during the two thousand five regular session of the Legislature: Provided, That the legislative rule containing the state’s water quality standards shall remain in force and effect as if promulgated by the department of Environmental Protection until the secretary amends the rule in accordance with the
provisions of article three, chapter twenty-nine-a of this code. Any proceedings, including notices of proposed rulemaking pending before the Environmental Quality Board, and any other functions, actions or authority transferred to the secretary shall continue in effect as actions of the secretary.

(b) All meetings with the secretary or any employee of the department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances thereto shall be held in accordance with the provisions of article nine-a, chapter six of this code. When the secretary is considering the form and substance of the rule governing water quality standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the department’s employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the department’s employees or its consultants, contractors or agents; or (iii) consultations between the secretary, the department’s employees or its consultants, contractors or agents with any interested party for the purpose of collecting facts and explaining state and federal requirements relating to a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the secretary shall promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code setting standards of water quality applicable to both the surface waters and groundwaters of this state. Standards of quality with respect to surface waters shall protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water quality standards of the secretary may not specify the design of equipment, type of
construction or particular method which a person shall use to reduce the discharge of a pollutant.

(d) The secretary shall establish the antidegradation implementation procedures as required by 40 C.F.R. 131.12(a) which apply to regulated activities that have the potential to affect water quality. The secretary shall propose for legislative approval, pursuant to article three, chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which include specifics of the review depending upon the existing uses of the water body segment that would be affected, the level of protection or “tier” assigned to the applicable water body segment, the nature of the activity and the extent to which existing water quality would be degraded. Any final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does not become effective until that determination is approved by the Legislature through the legislative rulemaking process as provided for in article three, chapter twenty-nine-a of the code.

(e) All remaining variances shall be applied for and considered by the secretary and any variance granted shall be consistent with 33 U.S.C. Section 1311(p) of the Federal Water Control Act. At a minimum, when considering an application for a remaining variance the secretary shall consider the data and information submitted by the applicant for the variance; and comments received at a public comment period and public hearing. The secretary may not grant a variance without requiring the applicant to improve the instream water quality as much as is reasonably possible by applying best available technology economically achievable using best professional judgment. Any such requirement will be included as a permit condition. The secretary may not grant a variance without a demonstration by the applicant that the coal remining operation will result in the potential for improved instream water quality as a result of the remining operation. The secretary may not
grant a variance where he or she determines that degradation of the instream water quality will result from the remining operation.

AN ACT to amend and reenact §22-3-24 of the Code of West Virginia, 1931, as amended, relating to underground water supply replacement; altering requirements for mine operators for replacement of water supply; and requiring prior department approval before discontinuing water supply replacement.

Be it enacted by the Legislature of West Virginia:

That §22-3-24 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.

§22-3-24. Water rights and replacement; waiver of replacement.

(a) Nothing in this article affects in any way the rights of any person to enforce or protect, under applicable law, the person’s interest in water resources affected by a surface mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner’s
supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner’s underground water supply if the inspector determines the following: (1) Contamination, diminution or damage to an owner’s underground water supply exists; and (2) a preblast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner’s property, including the underground water supply, that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation.

(d) The operator conducting the mining operation shall: (1) Provide an emergency drinking water supply within twenty-four hours; (2) provide temporary water supply within seventy-two hours; (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the secretary may extend the time frame on case-by-case basis; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

(e) An owner aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter
twenty-nine-a of this code to implement the requirements of this section.

(g) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

(h) Notwithstanding the denial of the operator of responsibility for the damage of the owners water supply or the status of any appeal on determination of liability for the damage to the owners water supply, the operator may not discontinue providing the required water service until authorized by the division.

Notwithstanding the provisions of subsection (g) of this section, on and after the effective date of the amendment and reenactment of this section during the regular legislative session of two thousand six, the provisions of this section shall apply to all mining operations for water replacement claims resulting from mining operations regardless of when the claim arose.

CHAPTER 252

(Com. Sub. for H. B. 3119 — By Mr. Speaker, Mr. Kiss, and Delegates Varner, Williams, Crosier, Kominar, Stemple, Beane, Perry, H. White, Michael and Campbell)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2006.]

AN ACT to amend and reenact §20-1-10 of the Code of West Virginia, 1931, as amended, relating to wildlife management
areas; revising areas subject to property management requirements; altering reporting requirements; establishing requirements of land use for recreational hunting and shooting; preserving net habitat for hunting and shooting; and establishing reporting requirements for the Division of Natural Resources.

Be it enacted by the Legislature of West Virginia:

That §20-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-10. Property management.

(a) The division shall maintain at all times an accurate record of all of its lands, interests in lands, buildings, structures, equipment and other tangible properties and assets. The record shall reflect the location, utility, condition and estimated value of all such properties and assets. The division shall provide for the maintenance, preservation and custody of all such properties and assets, and when any item or items thereof become obsolete or are no longer needed, the division shall report thereon to the Public Lands Corporation for disposition thereof.

(b) The director shall select and designate a competent and qualified person as division property officer, who shall be responsible for the division’s records relating to its properties and assets and for the maintenance, preservation, custody and disposition of all such properties and assets as herein provided.

(c) Subject to valid existing rights, division owned wildlife management area lands shall be open to access and use for recreational hunting and shooting except as limited by the division for reasons of public safety, fish and wildlife management or homeland security or as otherwise limited by law.

(d) The division shall exercise its authority consistent with subsection (c) to support, promote and enhance recreational
hunting and shooting opportunities, to the extent authorized by statute. The division shall give preference to hunting and shooting over other uses of division owned wildlife management area lands.

(e) Division land management decisions and actions may not result in a net loss of habitat land acreage available for hunting and shooting opportunities on division owned wildlife management area lands that exists on the effective date of this section.

(f) On or before the first day of December, the division shall submit an annual report to the Governor and to the Joint Committee on Government and Finance, including the following:

(1) The acreage administered by the division that has been closed during the previous year to recreational hunting and the reasons for the closures; and

(2) The acreage administered by the division that, in order to comply with the provisions of subsection (e) was opened to recreational hunting to compensate for that acreage.

CHAPTER 253

(S. B. 781 — By Senators Helmick, Sharpe, Chafin, Prezioso, Plymale, Edgell, Love, Bailey, Bowman, McCabe, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed March 11, 2006; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-40a; and to
amend and reenact §5A-3-42 of said code, all relating to long-term leases for wireless communication towers on public lands; authorizing the Secretary of the Department of Administration to negotiate and enter into long-term lease agreements; excluding public lands under the jurisdiction of the Division of Natural Resources; limiting the duration and conditions of such agreements; requiring leases to be recorded with the clerk of the county commission; and directing the secretary to promulgate rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-3-40a; and that §5A-3-42 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-40a. Long-term leases of public lands for wireless communication towers.

§5A-3-42. Leasing for space rules and regulations.

§5A-3-40a. Long-term leases of public lands for wireless communication towers.

1 (a) Notwithstanding any provision of law to the contrary, the secretary shall have sole authority to negotiate and enter into long-term lease agreements for lease of public lands to be used for placement of wireless communication towers: Provided, That such long-term lease agreements may not be for periods in excess of thirty years: Provided, however, That for the governmental units named in subsection (d) of this section, any lease proposed by the secretary may only be entered into upon approval in writing of the ranking administrator of the respective governmental unit described in said subsection.

(b) All revenues derived from leases established upon the enactment of this section shall be deposited into the General Revenue Fund except as provided in subsections (c) and (d) of this section.
(c) Revenues from leases initiated prior to the enactment of this section or subsequently renewed shall continue to be treated as they were prior to the enactment of this section.

(d) Revenues derived from the lease of property under the control of the Department of Transportation shall be deposited into the State Road Fund. Revenues derived from the lease of property under the control of the Division of Natural Resources shall be deposited into the State Park Improvement Fund. Revenues derived from the lease of property under the control of the Division of Forestry shall be deposited into the Division of Forestry Fund. Revenues derived from the lease of property under the control of institutions of higher education shall be deposited into the institution’s education and general capital fees fund. Revenues derived from the lease of property under the control of Higher Education Policy Commission shall be deposited into the commission’s State Gifts Grants and Contracts Fund. Revenues derived from the lease of property under the control of the West Virginia Council for Community and Technical College Education shall be deposited into the council’s Tuition and Required Educational and General Fees Fund.

(e) Any long-term lease agreement entered into pursuant to this section shall contain provisions allowing for the nonexclusive use of the public lands and allowance for use of the same public space for additional towers by competing persons or corporations.

(f) The secretary is further authorized to enter into long-term lease agreements for additional wireless communication towers by other persons or corporations upon the same public lands in which there already exists a lease and tower provided for under this section.
(g) Any long-term lease agreement entered into pursuant to this section shall be recorded in the office of the county clerk where public land which is the subject of the lease agreement is located.

§5A-3-42. Leasing for space rules and regulations.

1 The secretary shall have the power and authority to promulgate such rules and regulations as he may deem necessary to carry out the provisions of sections thirty-eight, thirty-nine, forty, forty-a and forty-one of this article.

CHAPTER 254

(S. B. 790 — By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Passed March 9, 2006; in effect from passage.]
[Approved by the Governor on April 4, 2006.]

AN ACT to amend and reenact §23-5-12 of the Code of West Virginia, 1931, as amended, relating to filing appeals of workers' compensation decisions to the board of review.

Be it enacted by the Legislature of West Virginia:

That §23-5-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. REVIEW.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.
(a) Any employer, employee, claimant or dependent who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of section nine of this article shall have the right to appeal to the board created in section eleven of this article for a review of such action. The Workers’ Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the board of review, with a copy to the office of judges, within thirty days after receipt of notice of the action complained of or, in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The office of judges, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the office of judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may
affirm the order or decision of the administrative law judge or
remand the case for further proceedings. It shall reverse, vacate
or modify the order or decision of the administrative law judge
if the substantial rights of the petitioner or petitioners have been
prejudiced because the administrative law judge’s findings are:

(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the
administrative law judge; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative and
substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of
discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the board shall issue a written
decision and send a copy by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of
the board of review shall be in writing and state with specificity
the laws and facts relied upon to sustain, reverse or modify the
administrative law judge’s decision.

(2) Decisions of the board of review shall be made by a
majority vote of the board of review.

(3) A decision of the board of review is binding upon the
executive director and the commission and the successor to the
commission, other private insurance carriers and self-insured
employers, whichever is applicable, with respect to the parties
involved in the particular appeal. The executive director, the
successor to the commission, other private insurance carriers
and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the board of review.

(d) Instead of affirming, reversing or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional or further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional or further evidence in accordance with any instruction given by the board within thirty days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least ten days’ written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within sixty days, render his or her decision affirming, reversing or modifying the former action of the administrative law judge. The decision shall be appealable to and proceeded with by the board of review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers’ Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever applicable, following a remand shall be subject to objection to the office of judges and not to the board. The board may remand any case as often as in
its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

CHAPTER 255

(S. B. 505 — By Senators Prezioso and Oliverio)

[Passed February 17, 2006; in effect from passage.]
[Approved by the Governor on February 27, 2006.]

AN ACT to extend the time for the city council of Fairmont, Marion County, to meet as a levying body for the purpose of presenting to the voters of the city an election for a municipal excess levy for purposes of providing funding for the operation, maintenance and repair of the streets and roadways of the city of Fairmont from between the seventh and twenty-eighth days of March and the third Tuesday in April until the nineteenth day of May, two thousand six.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF THE CITY OF FAIRMONT MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the council for the city of Fairmont to meet as a levying body for an election authorizing a municipal
excess levy to provide funding for the operation, maintenance and repair of the streets and roadways.

Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the city council for the city of Fairmont, Marion County, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Auditor and the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until the nineteenth day of May, two thousand six, for the purpose of submitting to the voters of the city of Fairmont the question of authorizing a municipal excess levy for providing funding for the operation, maintenance and repair of the streets and roadways of the city of Fairmont.

CHAPTER 256

(H. B. 4751 — By Delegate Proudfoot, Tabb, Palumbo, Wysong, Tansill, Caputo, Yost, Hunt, Schadler and Walters)

[Passed March 6, 2006; in effect from passage.]
[Approved by the Governor on March 14, 2006.]

AN ACT to extend the time for the Board of Education of Grant County to meet as a levying body for the purpose of presenting to the voters of the county an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six.

Be it enacted by the Legislature of West Virginia:
THE BOARD OF EDUCATION OF GRANT COUNTY MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the board of education of Grant County to meet as a levying body for an election for an additional excess levy.

Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the board of education of Grant County is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six, for the purpose of presenting to the voters of the county an election for an additional excess levy to provide funding for the operation, maintenance and repair of schools and to pay school personnel.

CHAPTER 257

(H. B. 4569 — By Delegates Miley, Fragale, Laquinta and Cann)

[Passed March 10, 2006; in effect from passage.]
[Approved by the Governor on March 28, 2006.]

AN ACT extending the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of continuing the excess levy for bus services in Harrison County from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand six.
Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Harrison County Commission to meet as a levying body for an election continuing the excess levy for bus services.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, to the contrary, the county commission of Harrison County, West Virginia is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Tax Commissioner from between the seventh and twenty-eighth days of March and the third Tuesday in April until the first Thursday in June, two thousand six, for the purpose of submitting to the voters of Harrison County the question of continuing the excess levy for bus services in Harrison County.

CHAPTER 258

(H. B. 4484 — By Delegates Caputo, Manchin and Longstreth)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on April 3, 2006.]

AN ACT to extend the time for the County Commission of Marion County to meet as a levying body for the purpose of presenting to the voters of the county an election for continuing an excess levy to provide funding for vital public services from between the
Be it enacted by the Legislature of West Virginia:

MARION COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Marion County commission to meet as a levying body for an election continuing excess levies for vital public services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, 1931, as amended, the county commission of Marion County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand six, for the purpose of submitting to the voters of Marion County the question of continuing excess levies for vital public services.

CHAPTER 259

(H. B. 4112 — By Delegates Schadler, Evans and Rowan)

[Passed March 11, 2006; in effect from passage.]
[Approved by the Governor on March 29, 2006.]

AN ACT to extend the time for the County Commission of Mineral County to meet as a levying body for the purpose of presenting to the voters of the county an election for continuing excess levies
to provide funding for volunteer fire departments and the ambulance authority from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six.

Be it enacted by the Legislature of West Virginia:

MINERAL COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Mineral County Commission to meet as a levying body for an election to continue excess levies for volunteer fire departments and the ambulance authority.

Notwithstanding the provision of article eight, chapter eleven of the Code of West Virginia, 1931, as amended, the County Commission of Mineral County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the State Tax Commissioner, from between the seventh and twenty-eighth days of March and the third Tuesday in April until the third Tuesday in May, two thousand six, for the purpose of presenting to the voters of the county an election for continuing excess levies to provide funding for the volunteer fire departments and the ambulance authority.
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 seven, to the Department of Commerce - Miners’ Health, Safety and Training Fund, fund 3355, fiscal year 2007, organization 0314, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Commerce - Miners’ Health, Safety and Training Fund, fund 3355, fiscal year 2007,
organization 0314, available for expenditure during the fiscal year
ending the thirtieth day of June, two thousand seven; 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 seven, to fund 3355, fiscal year 2007,
organization 0314, be supplemented and amended by decreasing and
increasing items of appropriation to hereafter read as follows:

1 TITLE II – APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 DEPARTMENT OF COMMERCE

4 134-Miners’ Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2007 Org 0314

<table>
<thead>
<tr>
<th>Activity</th>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>$792,000</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>550</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>225,892</td>
</tr>
<tr>
<td>4 WV Mining Extension Service</td>
<td>026</td>
<td>150,000</td>
</tr>
<tr>
<td>5 Unclassified</td>
<td>099</td>
<td>1,428,130</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
<td>$2,596,572</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to
supplement, decrease and increase items of appropriation and
delete language in the aforesaid account for the designated
spending unit for expenditure during the fiscal year two
thousand seven with no new funds being appropriated.
AN ACT supplementing, amending, and increasing items of the existing appropriation to the Auditor’s Office - Land Operating Fund, fund 1206, fiscal year 2006, organization 1200, to the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2006, organization 1400, and to the Department of Health and Human Resources - Division of Health - West Virginia Birth to Three Fund, fund 5214, fiscal year 2006, organization 0506 by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established there remains an unappropriated balance of moneys in the Auditor’s Office - Land Operating Fund, fund 1206, fiscal year 2006, organization 1200, in the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2006, organization 1400, and in the Department of Health and Human Resources - Division of Health - West Virginia Birth to Three Fund, fund 5214, fiscal year 2006, organization 0506, available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 1206, fiscal year
2006, organization 1200, be amended and increased in the existing line item as follows:

1. TITLE II – APPROPRIATIONS.
2. Sec. 3. Appropriations from other funds.
3. EXECUTIVE
4. 94-Auditor’s Office-
5. Land Operating Fund
6. (WV Code Chapters 11A, 12 and 36)
7. Fund 1206 FY 2006 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$310,800</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 1446, fiscal year 2006, organization 1400, be amended and increased in the existing line item as follows:

15. TITLE II – APPROPRIATIONS.
16. Sec. 3. Appropriations from other funds.
17. DEPARTMENT OF ADMINISTRATION
18. 104-Department of Agriculture-
19. Donated Food Fund
20. (WV Code Chapter 19)
21. Fund 1446 FY 2006 Org 1400
And, that the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 5214, fiscal year 2006, organization 0506, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

163-Division of Health-

West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2006 Org 0506

The purpose of this supplementary appropriation bill is to supplement, amend, and increase existing line items in the aforesaid accounts for the designated spending units for expenditure during the fiscal year ending the thirtieth day of June, two thousand six.
CHAPTER 3

(H. B. 113 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

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 seven, to a new item of appropriation designated to the Department of Commerce - Division of Labor - Weights and Measures Fund, fund 3196, fiscal year 2007, organization 0308, supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Commerce - Division of Labor - Weights and Measures Fund, fund 3196, fiscal year 2007, organization 0308, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two thousand six, 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.
The purpose of this supplementary appropriation bill is to supplement the accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand seven, by providing for a new item of appropriation to be established therein to appropriate funds for the designated spending unit for expenditure during the fiscal year two thousand seven.

---

AN ACT supplementing, amending, reducing, and increasing items of the existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2006, organization 0803, all supplementing and
amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated the thirteenth day of June, two thousand six, setting forth therein the cash balances and investments as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Statement of the State Road Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 2006, organization 0803, be amended and reduced in the line items as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

91-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2006 Org 0803

<table>
<thead>
<tr>
<th>State Activity</th>
<th>Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2006, organization 0803, be amended and increased in the line items as follows:

TITLE II - APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

91-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2006 Org 0803

<table>
<thead>
<tr>
<th>State Activity Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 Equipment Revolving .......... 276 $7,000,000</td>
</tr>
<tr>
<td>10 Other Federal Aid Programs .... 279 50,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce, and increase existing line items in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending the thirtieth day of June, two thousand six.
CHAPTER 5

(H. B. 115 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

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 seven, to the Department of Agriculture - State Conservation Committee, fund 8783, fiscal year 2007, organization 1400, to the Department of Education and the Arts, State Board of Rehabilitation, Division of Rehabilitation Services, fund 8734, fiscal year 2007, organization 0932, to a new item of appropriation designated to the Department of Education and the Arts, State Board of Rehabilitation, Division of Rehabilitation Services - Disability Determination Services, fund 8890, fiscal year 2007, organization 0932, and to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 8858, fiscal year 2007, organization 0613, all supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand seven, 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 seven, to fund 8783, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

EXECUTIVE

268-Department of Agriculture-

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2007 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096 $1,514,314</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8734, fiscal year 2007, organization 0932, be supplemented and amended by decreasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION AND THE ARTS

287-State Board of Rehabilitation-

Division of Rehabilitation Services
And, that chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill, be supplemented and amended by adding to Title II, Section Six thereof the following:

TITILE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION AND THE ARTS

287a-State Board of Rehabilitation-

Division of Rehabilitation Services-

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2007 Org 0932

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8858, fiscal year 2007, organization 0613, be supplemented and amended by increasing the total appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

300-Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2007 Org 0613

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096 $ 6,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement these accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand seven, by decreasing and increasing existing items of appropriation and by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending units for expenditure during the fiscal year two thousand seven.

CHAPTER 6

(H. B. 116 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

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 seven, to the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2007, organization 1400, to the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2007, organization 1400, to the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2007, organization 1400, to the Department of Administration - Division of Information Services and Communications, fund 2220, fiscal year 2007, organization 0210, to the Department of Administration - Division of Personnel, fund 2440, fiscal year 2007, organization 0222, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs - Veterans’ Facilities Support Fund, fund 6703, fiscal year 2007, organization 0613, to the Department of Revenue - Racing Commission - Administration and Promotion, fund 7304, fiscal year 2007, organization 0707, to the Department of Revenue - Racing Commission - Administration, Promotion and Education Fund, fund 7307, fiscal year 2007, organization 0707, and to the WV Board of Examiners for Speech-Language Pathology and Audiology, fund 8646, fiscal year 2007, organization 0930, all supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

WHEREAS, The Governor has established there remains an unappropriated balance of moneys in the Department of Agriculture - Agriculture Fees Fund, fund 1401, fiscal year 2007, organization 1400, in the Department of Agriculture - General John McCausland Memorial Farm, fund 1409, fiscal year 2007, organization 1400, in the Department of Agriculture - Donated Food Fund, fund 1446, fiscal year 2007, organization 1400, in the Department of Administration - Division of Information Services and Communications, fund 2220, fiscal year 2007, organization 0210, in the Department of Administration - Division of Personnel, fund 2440, fiscal year 2007, organization 0222, in the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs - Veterans’ Facilities Support Fund, fund 6703, fiscal year 2007, organization 0613, in the Department of
Revenue - Racing Commission - Administration and Promotion, fund 7304, fiscal year 2007, organization 0707, in the Department of Revenue - Racing Commission - Administration, Promotion and Education Fund, fund 7307, fiscal year 2007, organization 0707, and in the WV Board of Examiners for Speech-Language Pathology and Audiology, fund 8646, fiscal year 2007, organization 0930 available for expenditure in the fiscal year ending the thirtieth day of June, two thousand seven; 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 seven, to fund 1401, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>Act-</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 137,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>48,000</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 1401,
fiscal year 2007, organization 1400, be supplemented and amended by decreasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

101-Department of Agriculture-

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2007 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 1409, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

103-Department of Agriculture-

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2007 Org 1400
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 1446, fiscal year 2007, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

105-Department of Agriculture-

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2007 Org 1400

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 2220, fiscal year 2007, organization 0210, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>66</td>
<td>4 Unclassified</td>
<td>099</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 2440, fiscal year 2007, organization 0222, be supplemented and amended by increasing the total appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Sec. 3. Appropriations from other funds.**

**DEPARTMENT OF ADMINISTRATION**

114-Division of Personnel  
(WV Code Chapter 29)

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>79</td>
<td>4 Unclassified</td>
<td>099</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 6703, fiscal year 2007, organization 0613, be supplemented and amended by increasing the total appropriation as follows:
TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY
AFFAIRS AND PUBLIC SAFETY

185-Division of Veterans’ Affairs-
Veterans’ Facilities Support Fund
(WV Code Chapter 9A)

Fund 6703 FY 2007 Org 0613

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 7304, fiscal year 2007, organization 0707, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

207-Racing Commission-
Administration and Promotion
(WV Code Chapter 19)

Fund 7304 FY 2007 Org 0707
106 107 108 109 110 111 112 113 114

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 7307, fiscal year 2007, organization 0707, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF REVENUE

209-Racing Commission-

Administration, Promotion and Education Fund

(WV Code Chapter 19)

Fund 7307 FY 2007 Org 0707

122 123 124 125 126 127 128

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 8646, fiscal year 2007, organization 0930, be supplemented and amended by increasing the total appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.
MISCELLANEOUS BOARDS AND COMMISSIONS

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

(WV Code Chapter 30)

Fund 8646 FY 2007 Org 0930

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, increase, and decrease the aforesaid accounts for the designated spending units, for fiscal year ending the thirtieth day of June, two thousand seven, for expenditure during the fiscal year two thousand seven.

CHAPTER 7

(Com. Sub. for H. B. 118 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed June 14, 2006; in effect from passage.] [Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2007, organization
0613, to the Department of Administration - Department of Administration - Office of the Secretary, fund 0186, fiscal year 2007, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2007, organization 0221, to the Department of Commerce - Division of Forestry, fund 0250, fiscal year 2007, organization 0305, to the Department of Commerce - Geological and Economic Survey, fund 0253, fiscal year 2007, organization 0306, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, to the Department of Commerce - Division of Labor, fund 0260, fiscal year 2007, organization 0308, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2007, organization 0310, to the Department of Commerce - Department of Commerce - Office of the Secretary, fund 0606, fiscal year 2007, organization 0431, to the Department of Education and the Arts - Department of Education and the Arts - Office of the Secretary, fund 0294, fiscal year 2007, organization 0432, to the Department of Education and the Arts - Library Commission, fund 0296, fiscal year 2007, organization 0433, to the Department of Education and the Arts - Educational Broadcasting Authority, fund 0300, fiscal year 2007, organization 0439, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2007, organization 0932, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2007, organization 0313, to the Department of Health and Human Resources - Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2007, organization 0501, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2007, organization 0506, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization
0506, to the Department of Health and Human Resources - Human Rights Commission, fund 0416, fiscal year 2007, organization 0510, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2007, organization 0511, to the Department of Military Affairs and Public Safety - Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2007, organization 0601, to the Department of Military Affairs and Public Safety - Division of Corrections - Central Office, fund 0446, fiscal year 2007, organization 0608, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2007, organization 0608, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 0453, fiscal year 2007, organization 0612, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2007, organization 0613, to the Department of Military Affairs and Public Safety - Fire Commission, fund 0436, fiscal year 2007, organization 0619, to the Department of Military Affairs and Public Safety - Division of Juvenile Services, fund 0570, fiscal year 2007, organization 0621, to the Department of Revenue - Office of the Secretary, fund 0465, fiscal year 2007, organization 0701, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2007, organization 0702, to the Department of Transportation - State Rail Authority, fund 0506, fiscal year 2007, organization 0804, to the Department of Transportation - Aeronautics Commission, fund 0582, fiscal year 2007, organization 0807, to Higher Education - West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2007, organization 0420, and to Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2007, organization 0442, all supplementing and amending chapter six, acts of the Legislature, regular session, two thousand six, known as the Budget Bill.

*Be it enacted by the Legislature of West Virginia:*
That the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2007, organization 0613, be amended and reduced in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

72-Division of Veterans’ Affairs
(WV Code Chapter 9A)

Fund 0456 FY 2007 Org 0613

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans’ Nursing Home</td>
<td>286 $ 1,000,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Administration - Department of Administration - Office of the Secretary, fund 0186, fiscal year 2007, organization 0201, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

18-Department of Administration-
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2007 Org 0205

<table>
<thead>
<tr>
<th>Unclassified - Total - Transfer</th>
<th>402</th>
<th>$ 150,517,000</th>
</tr>
</thead>
</table>

Any unexpended balance remaining in the appropriation for Pension Merger Administrative Costs (fund 0195, activity 429) at the close of the fiscal year 2006 is hereby reappropriated for
expenditure during the fiscal year 2007 and may be expended for all administrative costs related to the pension merger, including but not limited to attorney fees and expenses, witness fees and expenses and court costs.

The above appropriation for Unclassified - Total - Transfer (fund 0195, activity 402) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601) only after all other funding required by Title II - Appropriations, Section One, Appropriations from General Revenue have been satisfied as determined by the Director of the Budget. Further, the above appropriation shall not be considered in the aggregate eligible for consideration of the five percent secretary transfer authority granted in “Title I - General Provisions, Sec. 3. Classifications and appropriations.”

Should the actual revenues accruing to the General Revenue Fund be insufficient to fully fund all appropriations of “Title II - Appropriations, Section One, Appropriations from General Revenue,” the appropriation to the Unclassified - Total - Transfer (fund 0195, activity 402) shall be reduced to the extent funds are available and the appropriation made in the reduced amount and thereafter transferred to the Unclassified - Total - Transfer (fund 0195, activity 402).

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.
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2007, organization 0221, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

26-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2007 Org 0221

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - Division of Forestry, fund 0250, fiscal year 2007, organization 0305, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

32-Division of Forestry
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

Geological and Economic Survey

Fund 0253 FY 2007 Org 0306

1  Personal Services .................. 001  $ 5,000

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year
2007, organization 0307, be supplemented, decreased and amended to hereafter read as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF COMMERCE**

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2007 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$3,967,506</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>63,218</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>1,191,418</td>
</tr>
<tr>
<td>ARC-WV Home for Your Own Alliance</td>
<td></td>
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<tr>
<td>Southern WV Career Center</td>
<td>191,750</td>
</tr>
<tr>
<td>Unclassified</td>
<td>1,431,181</td>
</tr>
<tr>
<td>Partnership Grants (R)</td>
<td>1,950,000</td>
</tr>
<tr>
<td>National Youth Science Camp</td>
<td>200,000</td>
</tr>
<tr>
<td>Local Economic Development</td>
<td></td>
</tr>
<tr>
<td>Partnerships (R)</td>
<td>1,870,000</td>
</tr>
<tr>
<td>ARC Assessment</td>
<td>167,308</td>
</tr>
<tr>
<td>Institute for Software Research</td>
<td>76,213</td>
</tr>
<tr>
<td>Mid-Atlantic Aerospace Complex (R)</td>
<td>176,783</td>
</tr>
<tr>
<td>Guaranteed Work Force Grant (R)</td>
<td>2,247,000</td>
</tr>
<tr>
<td>Mingo County Surface Mine Project</td>
<td>125,000</td>
</tr>
<tr>
<td>Item</td>
<td>Description</td>
</tr>
<tr>
<td>------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>19</td>
<td>Robert C. Byrd Institute for Advanced/</td>
</tr>
<tr>
<td>20</td>
<td>Flexible Manufacturing-Technology</td>
</tr>
<tr>
<td>21</td>
<td>Outreach and Programs for</td>
</tr>
<tr>
<td>22</td>
<td>Environmental and</td>
</tr>
<tr>
<td>23</td>
<td>Advanced Technologies</td>
</tr>
<tr>
<td>24</td>
<td>Advantage Valley</td>
</tr>
<tr>
<td>25</td>
<td>Chemical Alliance Zone</td>
</tr>
<tr>
<td>26</td>
<td>WV High Tech Consortium</td>
</tr>
<tr>
<td>27</td>
<td>Charleston Farmers Market</td>
</tr>
<tr>
<td>28</td>
<td>Industrial Park Assistance (R)</td>
</tr>
<tr>
<td>29</td>
<td>International Offices (R)</td>
</tr>
<tr>
<td>30</td>
<td>Grant Programs</td>
</tr>
<tr>
<td>31</td>
<td>Small Business Development</td>
</tr>
<tr>
<td>32</td>
<td>WV Manufacturing</td>
</tr>
<tr>
<td>33</td>
<td>Extension Partnership</td>
</tr>
<tr>
<td>34</td>
<td>Polymer Alliance</td>
</tr>
<tr>
<td>35</td>
<td>National Institute of</td>
</tr>
<tr>
<td>36</td>
<td>Chemical Studies</td>
</tr>
<tr>
<td>37</td>
<td>Local Economic Development</td>
</tr>
<tr>
<td>38</td>
<td>Assistance (R)</td>
</tr>
<tr>
<td>39</td>
<td>Community College Workforce</td>
</tr>
<tr>
<td>40</td>
<td>Development</td>
</tr>
<tr>
<td>41</td>
<td>BRIM Premium</td>
</tr>
<tr>
<td>42</td>
<td>Hardwood Alliance Zone</td>
</tr>
<tr>
<td>43</td>
<td>Regional Councils</td>
</tr>
<tr>
<td>44</td>
<td>Mainstreet Program</td>
</tr>
<tr>
<td>45</td>
<td>I-79 Development Council</td>
</tr>
<tr>
<td>46</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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 (fund0256,activity231), 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), and Economic Development Assistance (fund 0256, activity 900) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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 fourteen, 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.

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - Division of Labor, fund 0260, fiscal year 2007, organization 0308, be amended and increased in the existing line item as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF COMMERCE**

*35-Division of Labor*
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2007, organization 0310, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

36-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2007 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001  $ 5,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - Office of the Secretary, fund 0606,
fiscal year 2007, organization 0327, be amended and increased
in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

40-Department of Commerce-

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2007 Org 0327

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified</td>
<td>099 $ 5,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State
Fund, General Revenue, to the Department of Education and the
Arts - Department of Education and the Arts - Office of the
Secretary, fund 0294, fiscal year 2007, organization 0431, be
amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

50-Department of Education and the Arts-

Office of the Secretary
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2007, organization 0432, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

WV Code Chapter 29

Fund 0293 FY 2007 Org 0432

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Education and the Arts - Library Commission, fund 0296, fiscal year 2007,
organization 0433, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

52-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2007 Org 0433

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $ 5,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Education and the Arts - Educational Broadcasting Authority, fund 0300, fiscal year 2007, organization 0439, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

53-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2007 Org 0439
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 0310, fiscal year 2007, organization 0932, be supplemented, increased and amended to hereafter read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

54-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2007 Org 0932

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$7,026,238</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$134,049</td>
</tr>
<tr>
<td>009</td>
<td>Independent Living Services</td>
<td>$24,000</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$2,776,615</td>
</tr>
<tr>
<td>163</td>
<td>Workshop Development</td>
<td>$1,816,149</td>
</tr>
<tr>
<td>206</td>
<td>Extended Services</td>
<td>$119,032</td>
</tr>
</tbody>
</table>
Ch. 7]  

APPROPRIATIONS  2157

|  8 | Ron Yost Personal Assistance Fund (R) | 407 | 340,000 |
|  9 | Employment Attendant Care Program | 598 | 179,000 |
| 10 | Capital Outlay and Maintenance (R) | 755 | 200,000 |
| 11 | BRIM Premium | 913 | 67,033 |
| 12 | Total | | $12,682,116 |

Any unexpended balances remaining in the appropriations for the Unclassified-Surplus (fund 0310, activity 097), Ron Yost Personal Assistance Fund (fund 0310, activity 407), and Capital Outlay, Repairs and Equipment - Surplus (fund 0310, activity 677) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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 2007 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 31 organizations.

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Environmental Protection - Division of Environmental Protection, fund 0273, fiscal year 2007, organization 0313, be amended and increased in the existing line item as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

56-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2007 Org 0313

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>$ 5,000</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Health and Human Resources - Department of Health and Human Resources - Office of the Secretary, fund 0400, fiscal year 2007, organization 0501, be amended and increased in the existing line items as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

58-Department of Health and Human Resources - Office of the Secretary
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2007, organization 0506, be amended and increased in the existing line items as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

59-**Division of Health- Central Office**

(WV Code Chapter 16)

**Fund 0407 FY 2007 Org 0506**

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services $ 001 258</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2007, organization 0506, be amended and increased in the existing line items as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2007 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$1,442</td>
</tr>
<tr>
<td>335</td>
<td>17,900</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Health and Human Resources - Human Rights Commission, fund 0416, fiscal year 2007, organization 0510, be amended and increased in the existing line item as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

62-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2007 Org 0510

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2007, organization 0511, be amended and increased in the existing line items as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**
63-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2007 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$97,182</td>
</tr>
<tr>
<td>114</td>
<td>2,575</td>
</tr>
<tr>
<td>183</td>
<td>515</td>
</tr>
<tr>
<td>468</td>
<td>95,637</td>
</tr>
<tr>
<td>515</td>
<td>2,318</td>
</tr>
<tr>
<td>603</td>
<td>5,150</td>
</tr>
<tr>
<td>706</td>
<td>1,803</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Women's Commission (fund 0403, activity 191) at the close of the fiscal year two thousand six is hereby reappropriated and redesignated to fund 0400, activity 191 for expenditure during the fiscal year two thousand seven.

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2007, organization 0601, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
And, 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 - Central Office, fund 0446, fiscal year 2007, organization 0608, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
And, 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 2007, organization 0608, be amended and increased in existing line items and by adding thereto a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

70-Division of Corrections-

Correctional Units

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

Fund 0450 FY 2007 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
</tr>
<tr>
<td>4 Beckley Correctional Center</td>
<td>$457</td>
</tr>
<tr>
<td>6 Anthony Center</td>
<td>$915</td>
</tr>
<tr>
<td>11 Pruntytown Correctional Center</td>
<td>$2,288</td>
</tr>
<tr>
<td>26 St. Mary’s Correctional Facility</td>
<td>$1,830</td>
</tr>
</tbody>
</table>
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 0453, fiscal year 2007, organization 0612, be supplemented, increased and amended to hereafter read as follows:

**TITLE II – APPROPRIATIONS.**

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

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**71-West Virginia State Police**

(WV Code Chapter 15)

Fund 0453 FY 2007 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$34,845,740</td>
</tr>
<tr>
<td>004</td>
<td>199,000</td>
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<tr>
<td>010</td>
<td>7,412,504</td>
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<tr>
<td>099</td>
<td>7,285,826</td>
</tr>
<tr>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>556</td>
<td>440,088</td>
</tr>
<tr>
<td>558</td>
<td>1,013,285</td>
</tr>
<tr>
<td>605</td>
<td>3,532,118</td>
</tr>
<tr>
<td>775</td>
<td>3,360,000</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), Communications and Other Equipment (fund 0453, activity 558), Barracks Maintenance and Construction - Surplus (fund 0453, activity 669), and Law Enforcement - Special Projects (fund 0453, activity 787) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2007, organization 0613, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

72-Division of Veterans’ Affairs
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Fire Commission, fund 0436, fiscal year 2007, organization 0619, be supplemented and amended to hereafter read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

74-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2007 Org 0619

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Division of Juvenile Services, fund 0570,
fiscal year 2007, organization 0621, be amended and increased in the existing line items as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

76-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2007 Org 0621

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Central Office (R)</td>
<td>701</td>
</tr>
<tr>
<td>6 Southern WV Youth Diagnostic Center (R)</td>
<td>792</td>
</tr>
<tr>
<td>13 Davis Center (R)</td>
<td>980</td>
</tr>
</tbody>
</table>

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Revenue - Office of the Secretary, fund 0465, fiscal year 2007, organization 0701, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF REVENUE

78-Office of the Secretary
And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2007, organization 0702, be amended and increased in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF REVENUE

79-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2007 Org 0702

General

Activity Funds

1 Unclassified ......................... 099 $ 5,000

And, that the items of the total appropriation from State Fund, General Revenue, to the Department of Transportation - State Rail Authority, fund 0506, fiscal year 2007, organization 0804, be amended and increased in the existing line item as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF TRANSPORTATION

83-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2007 Org 0804

General Activity Revenue Funds

1 Unclassified .......................... 099 $ 5,000

And, that the items of the total appropriation from State Fund, General Revenue, to the Department of Transportation - Aeronautics Commission, fund 0582, fiscal year 2007, organization 0807, be supplemented and amended to hereafter read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF TRANSPORTATION

86-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2007 Org 0807

General Activity Revenue Funds

1 Unclassified (R) ....................... 099 $ 1,366,394
Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) and Unclassified - Surplus (fund 0582, activity 097) at the close of the fiscal year 2006 are hereby reappropriated for expenditure during the fiscal year 2007.

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.

And, that the total appropriation from State Fund, General Revenue, to Higher Education - West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2007, organization 0420, be supplemented, increased and amended to hereafter read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

87-West Virginia Council for

Community and Technical College Education-

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2007 Org 0420

General

Act-

ivity

Revenue

Funds
2172 APPROPRIATIONS [Ch. 7

<table>
<thead>
<tr>
<th></th>
<th>New River Community and Technical College</th>
<th>358</th>
<th>$4,429,955</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>707,600</td>
</tr>
<tr>
<td>3</td>
<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>1,990,948</td>
</tr>
<tr>
<td>4</td>
<td>Fairmont State Community and Technical College</td>
<td>421</td>
<td>0</td>
</tr>
<tr>
<td>5</td>
<td>Shepherd Community and Technical College</td>
<td>434</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>West Virginia State Community and Technical College</td>
<td>445</td>
<td>3,074,167</td>
</tr>
<tr>
<td>7</td>
<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>8,053,214</td>
</tr>
<tr>
<td>8</td>
<td>West Virginia Northern Community and Technical College</td>
<td>447</td>
<td>6,565,528</td>
</tr>
<tr>
<td>9</td>
<td>West Virginia University - Parkersburg</td>
<td>471</td>
<td>8,428,561</td>
</tr>
<tr>
<td>10</td>
<td>West Virginia University Institute for Technology Community and Technical College</td>
<td>486</td>
<td>3,263,224</td>
</tr>
<tr>
<td>11</td>
<td>Marshall Community and Technical College</td>
<td>487</td>
<td>5,483,460</td>
</tr>
<tr>
<td>12</td>
<td>Blue Ridge Community and Technical College</td>
<td>885</td>
<td>2,531,131</td>
</tr>
<tr>
<td>13</td>
<td>College Transition Program</td>
<td>887</td>
<td>333,500</td>
</tr>
<tr>
<td>14</td>
<td>West Virginia Advance Workforce Development</td>
<td>893</td>
<td>2,000,000</td>
</tr>
<tr>
<td>15</td>
<td>Technical Program Development</td>
<td>894</td>
<td>1,000,000</td>
</tr>
<tr>
<td>16</td>
<td>Pierpont Community and Technical College</td>
<td>930</td>
<td>7,892,952</td>
</tr>
<tr>
<td>17</td>
<td>Total</td>
<td>932</td>
<td>$55,754,240</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for the West Virginia Council for Community and Technical Education (fund 0596, activity 392) and Community College Workforce Development (fund 0596, activity 878) at the close of the fiscal year shall be transferred to the Community College Workforce Development Fund, which shall be used to support noncapital purposes related to the accomplishment of that program.
of the fiscal year 2006 are hereby reappropriated for expendi-
ture during the fiscal year 2007.

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.

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

And, that the items of the total appropriation from the State
Fund, General Revenue, to Higher Education - Higher Educa-
tion Policy Commission - System - Control Account, fund
0586, fiscal year 2007, organization 0442, be amended and
reduced in the existing line item as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

89-Higher Education Policy Commission-
System-
Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2007 Org 0442

General Revenue Funds

17 West Virginia State University . . . . 441 $ 1,908,000
And, that the items of the total appropriation from the State Fund, General Revenue, to Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2007, organization 0442, be supplemented and amended by adding a new line item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

89-Higher Education Policy Commission-

System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2007 Org 0442

General
Revenue
Act-
ivity
Funds

17a West Virginia State University
17b Land Grant Match .................. 956 $ 1,908,000

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations, amend language and add reappropriation language in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand seven with no new money being appropriated.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2006, organization 0205, to the Department of Administration - Division of General Services, fund 0230, fiscal year 2006, organization 0211, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2006, organization 0221, to the Department of Administration - Public Employees Insurance Agency, fund 0200, fiscal year 2006, organization 0225, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, to the Department of Commerce - Division of Miners’ Health, Safety and Training, fund 0277, fiscal year 2006, organization 0314, to the Department of Education and the Arts - Division of Culture and History, fund 0293, fiscal year 2006, organization 0432, to the Department of Health and Human Resources - Division of Health - Central Office, fund 0407, fiscal year 2006, organization 0506, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, fiscal year 2006, organization 0506, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to the Department of

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document which included a Statement of the State Fund, General Revenue, dated the eleventh day of January, two thousand six, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s Statement of the State Fund - General Revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended by increasing an existing item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

18-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total - Transfer</td>
<td>$28,390,300</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer (fund 0195, activity 402) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (Fund 2601).

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0230, fiscal year 2006, organization 0211, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

20-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2006 Org 0211
Any unexpended balance remaining in the appropriation for Unclassified (fund 0230, activity 099) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0226, fiscal year 2006, organization 0221, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

25-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2006 Org 0221

Any unexpended balance remaining in the appropriation for Appointed Counsel - Public Defender Conflicts (fund 0226, activity 568) at the close of the fiscal year two thousand six is
hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0200, fiscal year 2006, organization 0225, be supplemented and amended by adding thereto a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF ADMINISTRATION

27-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2006 Org 0225

<table>
<thead>
<tr>
<th>General</th>
<th>Activity</th>
<th>Revenue</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Employees Subsidy (R)</td>
<td>922</td>
<td>$ 3,900,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Employees Subsidy (fund 0200, activity 922) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, be supplemented, increased and amended by adding thereto new items of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF COMMERCE

33-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2006 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>42a Infrastructure Projects</td>
<td>079  $ 14,000,000</td>
</tr>
<tr>
<td>42b Housing Development Fund Grants</td>
<td>089  250,000</td>
</tr>
</tbody>
</table>

The above appropriation for Infrastructure Projects (fund 0256, activity 079) shall be transferred to the West Virginia Infrastructure Fund (Fund 3384).

The above appropriation for Housing Development Fund Grants (fund 0256, activity 089) shall be granted to the West Virginia Housing Development Fund to assist families that must be relocated away from the floodplains.

And, that the items of the total appropriation from the State Fund, General Revenue, to the Department of Commerce - Division of Miners’ Health, Safety and Training, fund 0277, fiscal year 2006, organization 0314, be supplemented, increased and amended to hereafter read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.


<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$ 4,102,856</td>
</tr>
<tr>
<td>004</td>
<td>70,600</td>
</tr>
<tr>
<td>010</td>
<td>1,551,243</td>
</tr>
<tr>
<td>099</td>
<td>647,893</td>
</tr>
<tr>
<td>712</td>
<td>38,034</td>
</tr>
<tr>
<td>913</td>
<td>72,573</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
</tr>
<tr>
<td></td>
<td><strong>$ 6,483,199</strong></td>
</tr>
</tbody>
</table>

From the appropriation above (fund 0277) at least $500,000 shall be used in developing, procuring and/or deploying technologies to assist in locating and communicating with trapped miners, supporting life, transporting rescue personnel and rescued individuals through underground mines and otherwise assist with mine rescue operations.

Any unexpended balance remaining in the appropriation for Unclassified (fund 0277, activity 099) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0293, fiscal year 2006, organization 0432, be supplemented and amended by adding thereto a new item of appropriation as follows:
SECTION 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION AND THE ARTS

48-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2006 Org 0432

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>7a Capital Outlay, Repairs and</td>
<td>$350,000</td>
</tr>
<tr>
<td>7b Equipment (R)</td>
<td>589</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0293, activity 589) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0407, fiscal year 2006, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56-Division of Health-
Central Office

(WV Code Chapter 16)

Fund 0407 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 Statewide EMS Program Support (R)</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Statewide EMS Program Support (fund 0407, activity 383) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0525, fiscal year 2006, organization 0506, be supplemented and amended by increasing an existing item of appropriation and adding thereto a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2006 Org 0506
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0403, fiscal year 2006, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2006 Org 0511

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0450, fiscal year 2006, organization 0608, be supplemented and amended by increasing an existing item of appropriation and adding thereto a new item of appropriation as follows:
Section 1. Appropriations from General Revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

67-Division of Corrections-

Correctional Units

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

Fund 0450 FY 2006 Org 0608

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>11 Payments to Federal, County and/or Regional Jails (R) ...........</td>
<td>555 $8,266,546</td>
</tr>
<tr>
<td>12 Regional Jails (R) ...............</td>
<td>$8,266,546</td>
</tr>
<tr>
<td>23a Capital Outlay and Maintenance (R) ...............</td>
<td>755 2,879,500</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Payments to Federal, County and/or Regional Jails (fund 0450, activity 555) at the close of the fiscal year two thousand six is hereby reappropriated for expenditure during the fiscal year two thousand seven.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0453, fiscal year 2006, organization 0612, be supplemented and amended by adding thereto a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

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

Fund 0453 FY 2006 Org 0612

General
Activity Funds

16a Law Enforcement-
Special Projects (R) . . . . . . . . . . . . . . . . 787 $ 1,000,000

And, that the total appropriation for the fiscal year ending
the thirtieth day of June, two thousand six, to fund 0470, fiscal
year 2006, organization 0702, be supplemented and amended
by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF REVENUE

76-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2006 Org 0702

General
Activity Funds

4 Unclassified (R) . . . . . . . . . . . . . . . . 099 $ 100,000
And, that the items of the total appropriation from the State Fund, General Revenue, to Higher Education - West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2006, organization 0420, be supplemented and amended by adding thereto a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

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

(WV Code Chapter 18B)

Fund 0596 FY 2006 Org 0420

23a Community College Workforce

23b Development (R) .............. 878 $ 1,000,000

And, that the items of the total appropriation from the State Fund, General Revenue, to Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2006, organization 0442, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.
The purpose of this supplemental appropriation bill is to supplement, amend, increase and add items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.

CHAPTER 9

(S. B. 1010 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 14, 2006; in effect from passage.] [Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Division of Natural
Resources, fund 3267, fiscal year 2006, organization 0310, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the eleventh day of January, two thousand six, containing a Statement of the Lottery Net Profits, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year 2006; and

WHEREAS, It appears from the Governor’s Executive Budget Document, Statement of Lottery Net Profits, there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to fund 3267, fiscal year 2006, organization 0310, be supplemented and amended by adding a new item of appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations from Lottery Net Profits.

3 236—Division of Natural Resources

(WV Code Chapter 20)

5 Fund 3267 FY 2006 Org 0310

8 9a Capital Outlay - Parks (R) . . . . . . . 288 $ 13,330,000
Any unexpended balance remaining in the appropriation for Capital Outlay - Parks (fund 3267, activity 288) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

The purpose of this supplementary appropriation bill is to supplement and add an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2006.

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CHAPTER 10

(S. B. 1011 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriation from the State Fund, Lottery Net Profits, to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2007, organization 0508, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Fund, Lottery Net Profits, to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2007, organization 0508, be amended and reduced in the existing line item as follows:
TITLE II—APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

246—Bureau of Senior Services—

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2007 Org 0508

And that the total appropriation from the State Fund, Lottery Net Profits, to the Bureau of Senior Services - Lottery Senior Citizens Fund, fund 5405, fiscal year 2007, organization 0508, be amended and increased in the existing line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 4. Appropriations from Lottery Net Profits.

246—Bureau of Senior Services—

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2007 Org 0508
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriation in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year 2007 with no new money being appropriated.

CHAPTER 11

(S. B. 1012 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2006, organization 0705, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated the eleventh day of January, two thousand six, containing a Statement of the State Excess Lottery Revenue Fund, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of
revenue for the fiscal year 2006, less regular appropriations for the fiscal year 2006; and

WHEREAS, It appears from the Governor’s Executive Budget Document, Statement of the State Excess Lottery Revenue Fund, 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 six; 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 six, to fund 7208, fiscal year 2006, organization 0705, be supplemented and amended to hereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

3

4 253—Lottery Commission—

5 Excess Lottery Revenue Fund Surplus

6 Fund 7208 FY 2006 Org 0705

7

8

9

10 1 Unclassified - Total - Transfer . . . . 402 $ 12,900,000
11 2 Unclassified - Transfer . . . . . . . . 482 $133,023,642
12 3 Total . . . . . . . . . . . . . . . . . . . $145,923,642

13 The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund only after all funding required by section eighteen-a, article
twenty-two, chapter twenty-nine of the code has been satisfied as determined by the Director of the Lottery.

From the above appropriation for Unclassified - Transfer (activity 482), eleven million dollars shall be transferred to the Consolidated Public Retirement Board - West Virginia Department of Public Safety Death, Disability and Retirement Fund (fund 2160), one hundred eleven million twenty-three thousand six hundred forty-two dollars shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601), and eleven million dollars shall be transferred to the State Road Fund - Division of Highways (fund 9017) only after all other funding required, including that in the paragraph above, has been satisfied as determined by the Director of the Lottery.

The purpose of this supplementary appropriation bill is to supplement and increase an existing item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year 2006.

CHAPTER 12

(S. B. 1013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT supplementing, amending and increasing items of the existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal
year 2007, organization 0803, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand seven.

WHEREAS, The Governor submitted to the Legislature a Statement of the State Road Fund, dated the thirteenth day of June, two thousand six, setting forth therein the cash balances and investments as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year 2006, less net appropriation balances forwarded and regular appropriations for fiscal year 2006 and further included in the estimate of revenues for the fiscal year 2007, less net appropriation balances forwarded and regular appropriations for fiscal year 2007; and

WHEREAS, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand seven; 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 2007, organization 0803, be amended and increased in the line item 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 2007 Org 0803
The purpose of this supplementary appropriation bill is to supplement, amend and increase an existing line item in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending the thirtieth day of June, two thousand seven.

CHAPTER 13

(S. B. 1016 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 19, 2006.]

AN ACT supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, be supplemented and amended by creating Title II, section eight-a, to read as follows:

Sec. 8a. Appropriations from Lottery Net Profits surplus accrued.
Any remaining surplus accrued balance in the Lottery Net Profits as determined and certified by the Director of the Lottery from the fiscal year ending the thirtieth day of June, two thousand six, shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

The purpose of this supplementary appropriation bill is to amend chapter six, Acts of the Legislature, regular session, two thousand six, to create a new section in Title II of the budget bill and to transfer funds to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

CHAPTER 14

(S. B. 1017 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 14, 2006; in effect from passage.] [Approved by the Governor on June 19, 2006.]

AN ACT supplementing and amending chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That chapter six, Acts of the Legislature, regular session, two thousand six, known as the budget bill, be supplemented and amended by amending Title II, section nine, to read as follows:
Sec. 9. Appropriations from surplus accrued. — The following items are hereby appropriated from the State Excess Lottery Revenue Fund and are to be available for expenditure during the fiscal year 2007 out of surplus funds only, as determined by the Director of the Lottery, accrued from the fiscal year ending the thirtieth day of June, two thousand six, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus accrued from the fiscal year ending the thirtieth day of June, two thousand six.

In the event that surplus revenues available from the fiscal year ending the thirtieth day of June, two thousand six, are not sufficient to meet all the appropriations made pursuant to this section, then the appropriations shall be made to the extent that surplus funds are available and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section and subsequently to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

328-Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2007 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tax Reduction and Federal</td>
</tr>
<tr>
<td>2</td>
<td>Funding Increased</td>
</tr>
<tr>
<td>3</td>
<td>Compliance (TRAFFIC) -</td>
</tr>
<tr>
<td>4</td>
<td>Lottery Surplus ................. 929 $ 20,000,000</td>
</tr>
</tbody>
</table>
Ch. 14] APPROPRIATIONS 2199

32 329-Office of Technology

33 (WV Code Chapter 5A)

34 Fund 2532 FY 2007 Org 0231

35 General

36 Activity

37 Revenue

38 Fund Activity

39 Revenue

38 1 Network Monitoring -

39 Lottery Surplus .................... 919 $857,300

40 2 Unclassified - Lottery Surplus .... 928 $1,000,000

41 3 Total .......................... $1,857,300

42 330-West Virginia Development Office

43 (WV Code Chapter 5B)

44 Fund 3170 FY 2007 Org 0307

45 General

46 Activity

47 Revenue

48 Fund Activity

49 Revenue

48 1 Connectivity Research and

49 Development - Lottery Surplus . 923 $50,000

50 The above appropriation to Connectivity Research and

51 Development shall be used by the West Virginia Development

52 Office for the coordinated development of technical infrastruc-

53 ture in areas where expanded resources and technical infrastruc-

54 ture may be expected or required pursuant to the provisions of

55 section four, article six, chapter five-a of the code.

56 After first meeting all above appropriations made pursuant

57 to this section, then any remaining surplus accrued balance in

58 the Excess Lottery Revenue Fund as determined and certified

59 by the Director of the Lottery from the fiscal year ending the
CHILD PROTECTION ACT

The thirtieth day of June, two thousand six, shall be transferred to the Consolidated Public Retirement Board—West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

The purpose of this supplementary appropriation bill is to supplement, amend, add and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2007.

CHAPTER 15

(H. B. 101 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect October 1, 2006.]
[Approved by the Governor on June 19, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-II-1 and §15-II-2; to amend said code by adding thereto a new section, designated §15-2-15; to amend and reenact §15-2C-2 of said code; to amend and reenact §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of said code; to amend said code by adding thereto a new section, designated §15-12-6a; to amend said code by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7 and §15-13-8; to amend and reenact §17B-2-3 of said code; to amend and reenact §18-5-15c of said code; to amend said code by adding thereto a new section, designated §25-1-22; to amend said code by adding thereto two new sections, designated §61-8B-9a and
§61-8B-9b; to amend said code by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; to amend said code by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; to amend and reenact §62-12-2 of said code; to amend and reenact §62-12-26 of said code; and to amend said code by adding thereto a new section, designated §62-12-27, all relating to enhancing government protection of children from abuse and neglect generally; establishing the Child Protection Act of 2006; setting forth legislative findings; creating a special unit within the State Police specializing in child abuse and neglect investigations; establishing duties of the unit; requiring state and local entities to report information to the unit; authorizing legislative and procedural rules; creating special account in State Treasury; requiring the reporting of information to the sex offender registry; requiring reporting of certain changes in sex offender information to sex offender registry; providing for the distribution and disclosure of information by the sex offender registry in certain circumstances; setting forth which information is ineligible for release by the sex offender registry; providing for the provision of information to the sex offender registry by the judiciary and agencies; providing for fines and terms of incarceration for failure to properly register with the sex offender registry and for assisting sex offenders in evading registration; providing for periodic verification of information by the sex offender registry; requiring periodic in-person reporting by sex offenders; establishing the child abuse and neglect registry; providing for procedures; requiring certain individuals convicted of child abuse or neglect to register and report changes in information; providing for the distribution and disclosure of information from the child abuse and neglect registry; providing for fines and terms of incarceration for persons that fail to properly register; providing for inclusion of information from the child abuse and neglect registry in the central abuse registry; providing for the creation and maintenance of statistical indexes of child abuse and neglect allegations and convictions; mandating coded driver’s licenses or nondriver identification cards for sexually violent predators;
providing for fines and terms of incarceration for failure to comply with license and identification card requirements; prohibiting contractors and service providers convicted of certain offenses from accessing school grounds; authorizing individual county school boards to require verification of criminal history and to share said information with other county school boards; providing for the disclosure of information by the central abuse registry; setting an effective date; establishing a task force to study correctional facilities specifically for sex offenders; providing for increased terms of incarceration for sexual assault and sexual abuse in certain circumstances; eliminating eligibility for probation, home incarceration and alternative sentences for certain sex offenders; providing for increased terms of incarceration for certain subsequent sex offenses committed by certain recidivist sex offenders; definitions; providing for polygraph examinations as a condition of supervision for certain probationers, parolees or those on supervised release; providing for electronic monitoring of certain sex offenders on probation, parole and supervised release; providing for term of incarceration for tampering with or destroying an electronic monitoring device; establishing a task force to develop measures aimed at managing sexually violent predators released from confinement; setting forth legislative findings and intent; requiring a report to the Legislature and Governor; requiring public hearings; providing for conditions on probation eligibility; providing for extended supervision for certain offenders; providing for supervised release requirements for certain sex offenders; addressing terms of incarceration for violation of supervised release; authorizing the Secretary of Health and Human Resources to propose rules and emergency rules for legislative approval; and providing for prerelease risk assessments of certain offenders.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §15-11-1 and §15-11-2; that said code be amended by adding thereto a new section, designated
§15-2-15; that §15-2C-2 of said code be amended and reenacted; that §15-12-2, §15-12-3, §15-12-5, §15-12-8, §15-12-9 and §15-12-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §15-12-6a; that said code be amended by adding thereto a new article, designated §15-13-1, §15-13-2, §15-13-3, §15-13-4, §15-13-5, §15-13-6, §15-13-7 and §15-13-8; that §17B–2-3 of said code be amended and reenacted; that §18-5-15c of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §25-1-22; that said code be amended by adding thereto a new section, designated §49-6A-11; that §61-8B-3 and §61-8B-7 of said code be amended and reenacted; that said code be amended by adding thereto two new sections, designated §61-8B-9a and §61-8B-9b; that said code be amended by adding thereto a new article, designated §62-11D-1, §62-11D-2 and §62-11D-3; that said code be amended by adding thereto a new article, designated §62-11E-1, §62-11E-2 and §62-11E-3; that §62-12-2 of said code be amended and reenacted; that §62-12-26 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §62-12-27, all to read as follows:

Chapter
15. Public Safety.
17B. Motor Vehicle Driver's Licenses.
18. Education.
25. Division of Corrections.
61. Crimes and Their Punishment.

CHAPTER 15. PUBLIC SAFETY.

Article
2. West Virginia State Police.
2C. Central Abuse Registry.
12. Sex Offender Registration Act.
13. Child Abuse and Neglect Registration.


This article and those other amendments and additions to this code established by this Act, enacted during the first extraordinary session of the West Virginia Legislature, two thousand six shall be known as “The Child Protection Act of 2006.”

§15-11-2. Legislative findings.

(a) The purpose of “The Child Protection Act of 2006” is to put in place a series of programs, criminal law revisions and other reforms to provide and promote the ability of the children of this state to live their lives without being exposed and subjected to neglect and physical and sexual abuse. The targeted increases in terms of incarceration, enhanced treatment, post-release supervision and new approaches toward the state’s child protection system will, in the aggregate, strengthen government’s ability to address this most serious problem. The Legislature finds that the broad reaching measures encompassed in this Act will provide for greater intervention among and punishment and monitoring of individuals who create a risk to our children’s safety and well-being.

(b) The Legislature further finds that the following reforms implemented as part of this Act will provide protections to the children of this state and are all important to eliminate risks to children and are essential elements of “The Child Protection Act of 2006”:

(1) Creating a special unit in the State Police specializing in the investigation of child abuse and neglect — section fifteen, article two, chapter fifteen of this code;
(2) Modifying the Sex Offender Registration Act to ensure more effective registration, identification and monitoring of persons convicted of sexual offenses — article twelve, chapter fifteen of this code;

(3) Establishing the Child Abuse and Neglect Registry, requiring the registry to disclose information to certain state and local officials — article thirteen, chapter fifteen of this code;

(4) Providing for coded driver’s licenses and non-driver identification cards to more easily identify sexually violent predators — section three, article two, chapter seventeen-b of this code;

(5) Prohibiting contractors and service providers convicted of certain offenses from accessing school grounds and providing for the release of criminal history information by the central abuse registry to county school boards — section fifteen-c, article five, chapter eighteen of this code;

(6) Establishing a task force to study the feasibility of constructing separate correctional facilities for the incarceration and treatment of sex offenders — section twenty-two, article one, chapter twenty-five of this code;

(7) Requiring the State Police and the Department of Health and Human Resources to maintain statewide child abuse and neglect statistical indexes of all convictions and allegations, respectively — section fifteen, article two, chapter fifteen and section eleven, article six-a, chapter forty-nine of this code;

(8) Providing for increased terms of incarceration for first degree sexual assault and first degree sexual abuse committed against children under the age of twelve — sections three and seven of article eight-b, chapter sixty-one of this code;

(9) Eliminating eligibility of certain sex offenders for probation, home incarceration and alternative sentences and
providing for enhanced terms of incarceration for certain subsequent sex offenses committed by recidivist sex offenders — sections nine-a and nine-b of article eight-b, chapter sixty-one of this code;

(10) Providing for polygraph examinations for certain sex offenders on probation, parole or supervised release — article eleven-d, chapter sixty-two of this code;

(11) Providing for electronic monitoring of certain sex offenders on probation, parole and supervised release — article eleven-d, chapter sixty-two of this code;

(12) Establishing a task force to develop measures aimed at managing sexually violent predators released from confinement — article eleven-e, chapter sixty-two of this code;

(13) Making psychiatric evaluations a condition of probation eligibility for certain sex offenders — section two, article twelve, chapter sixty-two of this code;

(14) Authorizing the Department of Health and Human Resources to establish qualifications for sex offender treatment programs and counselors — sections two and twenty-six, article twelve, chapter sixty-two of this code;

(15) Providing for extended supervision of certain offenders and supervised release requirements for sexually violent offenders — section twenty-six, article twelve, chapter sixty-two of this code; and

(16) Providing for prerelease risk assessments of certain sex offenders — section twenty-seven, article twelve, chapter sixty-two of this code.

(c) In addition, the Legislature finds that those enhanced terms of incarceration and post-conviction measures provided for in this Act which impact certain offenders convicted of
sexual offenses against adults are necessary and appropriate to protect children from neglect and physical and sexual abuse given that: (1) Clinical research indicates that a substantial percentage of sexual offenders “cross over” among age groups in selecting their victims; (2) many of the risk factors prevalent among sex offenders that “cross over” (e.g., substance abuse, lack of empathy toward victim, inability to control inappropriate impulses, childhood abuse) also are prevalent among perpetrators of child abuse and neglect; and (3) enhanced terms of incarceration, post-conviction supervision, monitoring and treatment measures will enable the criminal justice system to identify and address those “cross over” offenders before they can victimize additional children.

ARTICLE 2. WEST VIRGINIA STATE POLICE.


(a) The superintendent shall establish a special unit of the State Police, called the Child Abuse and Neglect Investigations Unit. The purpose of the unit is to focus on identifying, investigating and prosecuting criminal child abuse and neglect cases, in coordination with Child Protective Services, established pursuant to section nine, article six-a, chapter forty-nine of this code. The unit shall assist other State Police members with child abuse or neglect investigations as well as the Division of Child Protective Services. The unit may provide training, technical expertise and coordination of services for other law-enforcement agencies, Child Protective Services caseworkers, prosecuting attorneys and multidisciplinary teams established pursuant to the provisions of section two, article five-d, chapter forty-nine of this code, to identify, investigate, report and prosecute criminal child abuse and criminal child neglect cases. However, nothing in this section may be construed to mean that the unit will assume the duties or investigations of other State Police members or other law-enforcement officers.
(b) The unit will comprise, at a minimum, six members of the State Police. The superintendent shall assign a unit director, and shall assign five members regionally, to be dedicated and trained to assist county Child Protective Services Offices and caseworkers in investigating and coordinating with other law-enforcement personnel, cases of suspected child abuse or neglect. Cases to be investigated include allegations received pursuant to section two, article six-a, chapter forty-nine of this code, and any other credible child abuse or neglect allegations.

(c) The unit director’s duties include:

1. Overseeing State Police members assigned to the unit;
2. Coordinating activities of the unit with Child Protection Services;
3. Assisting Child Protective Services in developing and refining protocols for improving identification and prosecution of suspected criminal acts of child abuse or neglect; and
4. Assuring that all other directives and responsibilities of the unit are fulfilled.

(d) The unit shall maintain a statewide statistical index on child abuse and neglect convictions resulting from convictions for violations of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code, to monitor the timely and proper investigation and disposition of child abuse or neglect cases. The statistical data index maintained by the unit shall not contain information of a specific nature that would identify individual cases or persons.

(e) On or before the thirty-first day of December of each year, the unit director shall submit an annual report to the Joint Committee on Government and Finance. The annual report is to include the statistical index required under the provisions of subsection (d) of this section, and may include recommenda-
tions for statutory or program reforms that will assist the unit
and further promote the goals of the unit. The report may not
contain information of a specific nature that would identify
individual cases or persons.

(f) Every state law-enforcement agency of this state shall
periodically provide statistical information regarding child
abuse and neglect cases investigated and prosecuted by that
law-enforcement agency to the unit.

(g) The superintendent may propose rules for legislative
approval or procedural rules as necessary to effectuate the
provisions of this section in accordance with the provisions of
article three, chapter twenty-nine-a of this code. The superinten-
dent shall provide forms to law-enforcement agencies, circuit
clerks and parole officers to facilitate submission of appropriate
information necessary to prepare the statistical reports required
by this section.

(h) There is hereby established a special account in the
State Treasury, into which shall be deposited any gifts, grants
or donations made to the unit, and any other funds directed to
be deposited into the account by appropriation of the Legisla-
ture, and to be expended for the purposes of this section
pursuant to appropriation of the Legislature.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-2. Central Abuse Registry; required information; proce-
dures.

(a) The Criminal Identification Bureau of the West Virginia
State Police shall establish a Central Abuse Registry, to contain
information relating to criminal convictions involving child
abuse or neglect, abuse or neglect of an incapacitated adult or
an adult receiving behavioral health services and misappropri-
tion of property by individuals specified in subsection (b) of
this section and information relating to individuals required to be registered as a sex offender.

(b) The Central Abuse Registry shall contain, at a minimum, information relating to: Convictions of a misdemeanor or a felony involving abuse, neglect or misappropriation of property, by an individual performing services for compensation, within the scope of the individual’s employment or contract to provide services, in a residential care facility, in a licensed day care center in connection with providing behavioral health services, or in connection with the provision of home care services; information relating to individuals convicted of specific offenses enumerated in subsection (a), section three of this article with respect to a child or an incapacitated adult or an adult receiving behavioral health services; information relating to all individuals required to register with the Child Abuse and Neglect Registry established pursuant to article thirteen, chapter fifteen of this code; and information relating to all individuals required to register with the West Virginia State Police as sex offenders pursuant to the provisions of article twelve, chapter fifteen of this code. The Central Abuse Registry shall contain the following information:

(1) The individual’s full name;

(2) Sufficient information to identify the individual, including date of birth, social security number and fingerprints if available;

(3) Identification of the criminal offense constituting abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services;

(4) For cases involving abuse, neglect or misappropriation of property of a child or an incapacitated adult or an adult receiving behavioral health services in a residential care facility or a day care center, or of a child or an incapacitated adult or an
adult receiving behavioral health services receiving home care
services, sufficient information to identify the location where
the documentation of any investigation by the Department of
Health and Human Resources is on file and the location of
pertinent court files; and

(5) Any statement by the individual disputing the conviction, if he or she chooses to make and file one.

(c) Upon conviction in the criminal courts of this state of a
misdemeanor or a felony offense constituting child abuse or
neglect or abuse or neglect of an incapacitated adult or an adult
receiving behavioral health services, the individual so convicted
shall be placed on the Central Abuse Registry.

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

§15-12-2. Registration.
§15-12-3. Change in registry information.
§15-12-5. Distribution and disclosure of information; community information
programs by prosecuting attorney and State Police; petition to circuit
court.
§15-12-6a. Release of information to the Sex Offender Registry.
§15-12-8. Failure to register or provide notice of registration changes; penalty;
penalty for aiding and abetting.
§15-12-10. Address verification.

§15-12-2. Registration.

(a) The provisions of this article apply both retroactively
and prospectively.

(b) Any person who has been convicted of an offense or an
attempted offense or has been found not guilty by reason of
mental illness, mental retardation or addiction of an offense
under any of the following provisions of chapter sixty-one of
this code or under a statutory provision of another state, the
United States Code or the Uniform Code of Military Justice
which requires proof of the same essential elements shall register as set forth in subsection (d) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter:

(1) Article eight-b, including the provisions of former section six of said article, relating to the offense of sexual assault of a spouse, which was repealed by an Act of the Legislature during the year two thousand legislative session;

(2) Article eight-c;

(3) Sections five and six, article eight-d;

(4) Section fourteen, article two;

(5) Sections six, seven, twelve and thirteen, article eight; or

(6) Section fourteen-b, article three-c, as it relates to violations of those provisions of chapter sixty-one listed in this subsection.

(c) Any person who has been convicted of a criminal offense and the sentencing judge made a written finding that the offense was sexually motivated shall also register as set forth in this article.

(d) Persons required to register under the provisions of this article shall register in person at the West Virginia State Police detachment in the county of his or her residence, the county in which he or she owns or leases habitable real property that he or she visits regularly, the county of his or her place of employment or occupation and the county in which he or she attends school or a training facility, and in doing so, provide or cooperate in providing, at a minimum, the following when registering:
(1) The full name of the registrant, including any aliases, nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or resides at the time of registration, the address of any habitable real property owned or leased by the registrant that he or she regularly visits: Provided, That a post office box may not be provided in lieu of a physical residential address, the name and address of the registrant’s employer or place of occupation at the time of registration, the names and addresses of any anticipated future employers or places of occupation, the name and address of any school or training facility the registrant is attending at the time of registration and the names and addresses of any schools or training facilities the registrant expects to attend;

(3) The registrant’s social security number;

(4) A full-face photograph of the registrant at the time of registration;

(5) A brief description of the crime or crimes for which the registrant was convicted;

(6) Fingerprints;

(7) Information related to any motor vehicle, trailer or motor home owned or regularly operated by a registrant, including vehicle make, model, color and license plate number: Provided, That for the purposes of this article, the term “trailer” shall mean travel trailer, fold-down camping trailer and house trailer as those terms are defined in section one, article one, chapter seventeen-a of this code;

(8) Information relating to any Internet accounts the registrant has and the screen names, user names or aliases the registrant uses on the internet; and
(9) Information related to any telephone or electronic paging device numbers that the registrant has or uses, including, but not limited to, residential, work and mobile telephone numbers.

(e) (1) On the date that any person convicted or found not guilty by reason of mental illness, mental retardation or addiction of any of the crimes listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, regional jail administrator, city official or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person and any parole or probation officer who releases the person or supervises the person following the release, shall obtain all information required by subsection (d) of this section prior to the release of the person, inform the person of his or her duty to register and send written notice of the release of the person to the State Police within three business days of receiving the information. The notice must include the information required by said subsection. Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(2) Notwithstanding any provision of this article to the contrary, a court of this state shall, upon presiding over a criminal matter resulting in conviction or a finding of not guilty by reason of mental illness, mental retardation or addiction of a qualifying offense, cause, within seventy-two hours of entry of the commitment or sentencing order, the transmittal to the sex offender registry for inclusion in the registry all information
required for registration by a registrant as well as the following non-identifying information regarding the victim or victims:

(A) His or her sex;

(B) His or her age at the time of the offense; and

(C) The relationship between the victim and the perpetrator.

The provisions of this paragraph do not relieve a person required to register pursuant to this section from complying with any provision of this article.

(f) For any person determined to be a sexually violent predator, the notice required by subsection (d) of this section must also include:

(1) Identifying factors, including physical characteristics;

(2) History of the offense; and

(3) Documentation of any treatment received for the mental abnormality or personality disorder.

(g) At the time the person is convicted or found not guilty by reason of mental illness, mental retardation or addiction in a court of this state of the crimes set forth in subsection (b) of this section, the person shall sign in open court a statement acknowledging that he or she understands the requirements imposed by this article. The court shall inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons
who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(h) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article. The information required to be made public by the State Police by subdivision (2), subsection (b), section five of this article is to be accessible through the Internet. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released through the Internet.

(i) For the purpose of this article, “sexually violent offense” means:

(1) Sexual assault in the first degree as set forth in section three, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(2) Sexual assault in the second degree as set forth in section four, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction;

(3) Sexual assault of a spouse as set forth in the former provisions of section six, article eight-b, chapter sixty-one of this code, which was repealed by an Act of the Legislature during the two thousand legislative session, or of a similar provision in another state, federal or military jurisdiction;

(4) Sexual abuse in the first degree as set forth in section seven, article eight-b, chapter sixty-one of this code or of a similar provision in another state, federal or military jurisdiction.
(j) For purposes of this article, the term “sexually motivated” means that one of the purposes for which a person committed the crime was for any person’s sexual gratification.

(k) For purposes of this article, the term “sexually violent predator” means a person who has been convicted or found not guilty by reason of mental illness, mental retardation or addiction of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

(l) For purposes of this article, the term “mental abnormality” means a congenital or acquired condition of a person, that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(m) For purposes of this article, the term “predatory act” means an act directed at a stranger or at a person with whom a relationship has been established or promoted for the primary purpose of victimization.

(n) For the purposes of this article, the term “business days”, means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.

§15-12-3. Change in registry information.

When any person required to register under this article changes his or her residence, address, place of employment or occupation, motor vehicle, trailer or motor home information required by section two of this article, or school or training facility which he or she is attending, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police
of the changes in the manner prescribed by the Superintendent
of State Police in procedural rules promulgated in accordance
with the provisions of article three, chapter twenty-nine-a of
this code: Provided, That when any person required to register
under this article changes his or her residence, place of employ-
ment or occupation or school or training facility he or she is
attending from one county of this state to another county of this
state, he or she shall inform the West Virginia State Police
detachment in both counties within ten business days of the
change in the manner prescribed by the superintendent in
procedural rules promulgated in accordance with the provisions
of article three, chapter twenty-nine-a of this code.

§15-12-5. Distribution and disclosure of information; community
information programs by prosecuting attorney
and State Police; petition to circuit court.

(a) Within five business days after receiving any notifica-
tion as described in this article, the State Police shall distribute
a copy of the notification statement to:

(1) The supervisor of each county and municipal
law-enforcement office and any campus police department in
the city and county where the registrant resides, owns or leases
habitable real property that he or she regularly visits, is em-
ployed or attends school or a training facility;

(2) The county superintendent of schools in each county
where the registrant resides, owns or leases habitable real
property that he or she regularly visits, is employed or attends
school or a training facility;

(3) The child protective services office charged with
investigating allegations of child abuse or neglect in the county
where the registrant resides, owns or leases habitable real
property that he or she regularly visits, is employed or attends
school or a training facility;
(4) All community organizations or religious organizations which regularly provide services to youths in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility;

(5) Individuals and organizations which provide day care services for youths or day care, residential or respite care, or other supportive services for mentally or physically incapacitated or infirm persons in the county where the registrant resides, owns or leases habitable real property that he or she regularly visits, is employed or attends school or a training facility; and

(6) The Federal Bureau of Investigation (FBI).

(b) Information concerning persons whose names are contained in the sex offender registry is not subject to the requirements of the West Virginia Freedom of Information Act, as set forth in chapter twenty-nine-b of this code, and may be disclosed and disseminated only as otherwise provided in this article and as follows:

(1) When a person has been determined to be a sexually violent predator under the terms of section two-a of this article, the State Police shall notify the prosecuting attorney of the county in which the person resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. The prosecuting attorney shall cooperate with the State Police in conducting a community notification program which is to include publication of the offender's name, photograph, place of residence, location of regularly visited habitable real property owned or leased by the offender, county of employment and place at which the offender attends school or a training facility, as well as information concerning the legal rights and obligations of both the
offender and the community. Information relating to the victim of an offense requiring registration may not be released to the public except to the extent the prosecuting attorney and the State Police consider it necessary to best educate the public as to the nature of sexual offenses: Provided, That no victim’s name may be released in any public notification pursuant to this subsection. No information relating to telephone or electronic paging device numbers a registrant has or uses may be released to the public with this notification program. The prosecuting attorney and State Police may conduct a community notification program in the county where a person who is required to register for life under the terms of subdivision (2), subsection (a), section four of this article resides, owns or leases habitable real property that he or she regularly visits, is employed or attends a school or training facility. Community notification may be repeated when determined to be appropriate by the prosecuting attorney;

(2) The State Police shall maintain and make available to the public at least quarterly the list of all persons who are required to register for life according to the terms of subdivision (2), subsection (a), section four of this article. No information concerning the identity of a victim of an offense requiring registration or telephone or electronic paging device numbers a registrant has or uses may be released with this list. The method of publication and access to this list are to be determined by the superintendent; and

(3) A resident of a county may petition the circuit court for an order requiring the State Police to release information about persons that reside or own or lease habitable real property that the persons regularly visit in that county and who are required to register under section two of this article. The court shall determine whether information contained on the list is relevant to public safety and whether its relevance outweighs the importance of confidentiality. If the court orders information to
be released, it may further order limitations upon secondary dissemination by the resident seeking the information. In no event may information concerning the identity of a victim of an offense requiring registration or information relating to telephone or electronic paging device numbers a registrant has or uses be released.

(c) The State Police may furnish information and documentation required in connection with the registration to authorized law-enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement-related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks. The State Police also may disclose information collected under this article to the Division of Motor Vehicles pursuant to the provisions of section three, article two, chapter seventeen-b of this code.

(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

§15-12-6a. Release of information to the Sex Offender Registry.

Upon the request of the West Virginia State Police, agencies in possession of records produced in conjunction with investigation, prosecution, adjudication, incarceration, probation, parole or presentence review of a sex offender and any other records produced in conjunction with a sex offense shall provide those records to the State Police.
§15-12-8. Failure to register or provide notice of registration changes; penalty; penalty for aiding and abetting.

(a) Each time a person has a change in any of the registration information as required by this article and knowingly fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense under this section.

(b) Except as provided in this section, any person required to register for ten years pursuant to subdivision (1), subsection (a), section four of this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or confined in jail not more than one year, or both. Any person convicted of a second offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years. Any person convicted of a third or subsequent offense under this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than twenty-five years.

(c) Any person required to register for life pursuant to this article who knowingly provides materially false information or who refuses to provide accurate information when so required by the terms of this article, or who knowingly fails to register or knowingly fails to provide a change in any required information as required by this article, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years. Any
person convicted of a second or subsequent offense under this
subsection is guilty of a felony and, upon conviction thereof,
shall be imprisoned in a state correctional facility for not less
than ten nor more than twenty-five years.

(d) In addition to any other penalty specified for failure to
register under this article, any person under the supervision of
a probation officer, parole officer or any other sanction short of
confinement in jail or prison who knowingly refuses to register
or who knowingly fails to provide a change in information as
required by this article shall be subject to immediate revocation
of probation or parole and returned to confinement for the
remainder of any suspended or unserved portion of his or her
original sentence.

(e) Notwithstanding the provisions of subsection (c) of this
section, any person required to register as a sexually violent
predator pursuant to this article who knowingly provides
materially false information or who refuses to provide accurate
information when so required by terms of this article or who
knowingly fails to register or knowingly fails to provide a
change in any required information as required by this article is
guilty of a felony and, upon conviction thereof, shall, for a first
offense, be confined in a state correctional facility not less than
two nor more than ten years and for a second or subsequent
offense, is guilty of a felony and shall be confined in a state
correctional facility not less than fifteen nor more than thirty-
five years.

(f) Any person who knows or who has reason to know that
a sex offender is not complying, or has not complied, with the
requirements of this section and who, with the intent to assist
the sex offender in eluding a law-enforcement agency that is
seeking to find the sex offender to question the sex offender
about, or to arrest the sex offender for, his or her noncompli-
ance with the requirements of this section:
(1) Withholds information from, the law-enforcement agency about the sex offender’s noncompliance with the requirements of this section and, if known, the whereabouts of the sex offender; or

(2) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sex offender; or

(3) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sex offender; or

(4) Provides information to the law-enforcement agency regarding the sex offender which the person knows to be false information is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or confined in jail not more than one year, or both: Provided, That where the person assists or seeks to assist a sex offender whose violation of this section would constitute a felony, the person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.


(a) When any probation or parole officer accepts supervision of and has legal authority over any person required to register under this article from another state under the terms and conditions of the uniform act for out-of-state parolee supervision established under article six, chapter twenty-eight of this code, the officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the State Police the information required in subsection (d), section two of this article.
(b) Any person:

(1) Who resides in another state or federal or military jurisdiction;

(2) Who is employed, carries on a vocation, is a student in this state, is a visitor to this state for a period of more than fifteen continuous days or owns or leases habitable real property in this state that he or she regularly visits; and

(3) Who is required by the state, federal or military jurisdiction in which he or she resides to register in that state, federal or military jurisdiction as a sex offender, or has been convicted of a violation in that state, federal or military jurisdiction that is similar to a violation in this article requiring registration as a sex offender in this state, shall register in this state and otherwise comply with the provisions of this article.

(c) Any person changing residence to this state from another state or federal or military jurisdiction who is required to register as a sex offender under the laws of that state or federal or military jurisdiction shall register as a sex offender in this state.

§15-12-10. Address verification.

All registrants, including those for whom there has been no change in registration information since their initial registration or previous address verification, must report, in the month of their birth, or in the case of a sexually violent predator in the months of January, April, July and October, to the State Police detachment in their county or counties of registration and must respond to all verification inquiries or requests made by the State Police pursuant to this section. The State Police shall verify addresses of those persons registered as sexually violent predators every ninety days and all other registered persons once a year. The State Police may require registrants to
periodically submit to new fingerprints and photographs as part
of the verification process. The method of verification shall be
in accordance with internal management rules pertaining
thereto promulgated by the superintendent under authority of
section twenty-five, article two, chapter fifteen of this code.

ARTICLE 13. CHILD ABUSE AND NEGLECT REGISTRATION.

§15-13-1. Intent and findings.
§15-13-2. Registration.
§15-13-7. Failure to register or provide notice of registration changes; penalty.

§15-13-1. Intent and findings.

(a) It is the intent of this article to assist law-enforcement
agencies’ efforts to protect children from abuse and neglect by
requiring persons convicted of child abuse or neglect to register
with the State Police detachment in the county of his or her
residence and to report information as required by section two
of this article. It is not the intent of the Legislature that this act
be used to inflict retribution or additional punishment on any
person convicted of any offense requiring registration under this
article. This article is intended to be regulatory in nature and
not penal, and is intended to provide for the safety of children
who are exposed to persons convicted of child abuse and
neglect.

(b) The Legislature finds and declares that there is a
compelling and necessary public interest that children be
protected from physical abuse and neglect, and that require-
ments of this article are appropriate and reasonable because of
this compelling state interest.

(c) The Legislature also finds and declares that persons
required to register for committing child abuse or neglect
pursuant to this article have a reduced expectation of privacy because of the state’s interest in public safety.

§15-13-2. Registration.

(a) The provisions of this article apply both retroactively and prospectively.

(b) Any person who has been convicted of an offense or has been found not guilty solely by reason of mental illness, mental retardation or addiction of an offense under any of the provisions of sections two, two-a, three, three-a, four and four-a, article eight-d, of chapter sixty-one of this code or under a statutory provision of another state, the United States Code or the Uniform Code of Military Justice which requires proof of the same essential elements shall register as set forth in subsection (e) of this section and according to the internal management rules promulgated by the superintendent under authority of section twenty-five, article two of this chapter.

(c) The clerk of the court in which a person is convicted for an offense described in subsection (b) of this section, or for an offense described in a municipal ordinance which has the same elements as an offense described in said section, shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register.

(1) If the conviction is the judgment of a magistrate court, mayor, police court judge or municipal court judge, the clerk or recorder shall forward to the superintendent, at a minimum, information required on forms provided by the State Police relating to the person required to register when the person convicted has not requested an appeal within thirty days of the sentencing for such conviction.

(2) If the conviction is the judgment of a circuit court, the circuit clerk shall submit, at a minimum, the required informa-
tion to the superintendent regarding the person convicted within
thirty days after the judgment was entered.

(d) If a person has been convicted of any criminal offense
against a child in his or her household or of whom he or she has
custodial responsibility, and the sentencing judge makes a
written finding that there is a continued likelihood that the
person will continue to have regular contact with that child or
other children and that as such it is in the best interest of the
child or children for that person to be monitored, then that
person is subject to the reporting requirements of this article.

(e) In addition to any other requirements of this article,
persons required to register under the provisions of this article
shall provide or cooperate in providing, at a minimum, the
following when registering:

(1) The full name of the registrant, including any aliases,
nicknames or other names used by the registrant;

(2) The address where the registrant intends to reside or
resides at the time of registration, the name and address of the
registrant’s employer or place of occupation at the time of
registration, the names and addresses of any anticipated future
employers or places of occupation, the name and address of any
school or training facility the registrant is attending at the time
of registration and the names and addresses of any schools or
training facilities the registrant expects to attend: Provided,
That a post office box or other address that does not have a
physical street address of residence may not be provided in lieu
of a physical residence address;

(3) The registrant’s social security number;

(4) Ages and names of any children in the household of the
registrant, and any children currently living or subsequently
born to the registrant.
(5) A brief description of the offense or offenses for which the registrant was convicted; and

(6) A complete set of the registrant’s fingerprints.

(f) On the date that any person convicted or found not guilty solely by reason of mental illness, mental retardation or addiction of any of the offenses listed in subsection (b) of this section, hereinafter referred to as a “qualifying offense”, including those persons who are continuing under some post-conviction supervisory status, are released, granted probation or a suspended sentence, released on parole, probation, home detention, work release, conditional release or any other release from confinement, the Commissioner of Corrections, Regional Jail Administrator, city or sheriff operating a jail or Secretary of the Department of Health and Human Resources who releases the person, and any parole or probation officer who releases the person or supervises the person following the release, shall inform the person of his or her duty to register and send written notice of the release to the superintendent within three business days of release, and provide any other information as directed by rule of the State Police. The notice must include, at a minimum, the information required by subsection (e) of this section.

(g) Any person having a duty to register for a qualifying offense shall register upon conviction, unless that person is confined or incarcerated, in which case he or she shall register within three business days of release, transfer or other change in disposition status.

(h) At the time the person is convicted or found not guilty solely by reason of mental illness, mental retardation or addiction in a court of this state of the offenses set forth in subsection (b) of this section, the person shall sign in open court a notification statement acknowledging that he or she understands the requirements imposed by this article. The court shall
inform the person so convicted of the requirements to register imposed by this article and shall further satisfy itself by interrogation of the defendant or his or her counsel that the defendant has received notice of the provisions of this article and that the defendant understands the provisions. The statement, when signed and witnessed, constitutes prima facie evidence that the person had knowledge of the requirements of this article. Upon completion of the statement, the court shall provide a copy to the registry. Persons who have not signed a statement under the provisions of this subsection and who are subject to the registration requirements of this article must be informed of the requirement by the State Police whenever the State Police obtain information that the person is subject to registration requirements.

(i) The State Police shall maintain a central registry of all persons who register under this article and shall release information only as provided in this article.

(j) The superintendent shall provide forms to law-enforcement agencies, circuit clerks and parole officers to facilitate submission of appropriate information necessary to administer the child abuse and neglect registry established by this article.

(k) For the purposes of this article, the term "business days", means days exclusive of Saturdays, Sundays and legal holidays as defined in section one, article two, chapter two of this code.


(a) When any person required to register under this article changes his or her residence, address, or when any of the other information required by this article changes, he or she shall, within ten business days, inform the West Virginia State Police of the changes in the manner prescribed by the Superintendent of State Police in procedural rules promulgated in accordance
with the provisions of article three, chapter twenty-nine-a of
this code. Upon directive by the State Police, any person
required to register under this article may be required to appear
at the nearest State Police detachment from his or her residence,
to verify or provide additional information or documentation
necessary to have complete and accurate registry records.

(b) A person who is required to register pursuant to the
provisions of this article, who intends to move to another state
or country shall, prior to such move, notify the State Police of
his or her intent to move and of the location to which he or she
intends to move, or if that person is incarcerated he or she shall
notify correctional officials of his or her intent to reside in some
other state or country upon his or her release, and of the
location to which he or she intends to move. Upon such
notification, the State Police shall notify law-enforcement
officials of the jurisdiction where the person indicates he or she
intends to reside of the information provided by the person
under the provisions of this article.


(a) A person required to register pursuant to the provisions
of this article shall continue to comply with this section, except
during ensuing periods of incarceration or confinement, until
ten years have elapsed since the person was released from
prison, jail or a mental health facility or ten years have elapsed
since the person was placed on probation, parole or supervised
or conditional release. The ten-year registration period shall not
be reduced by the offender’s release from probation, parole or
supervised or conditional release.

(b) A person whose conviction is overturned for the offense
which required them to register under this article shall, upon
petition to the court, have their name removed from the
registry.

(a) Within five business days after receiving any notification as described in this article, the State Police shall transmit a copy of the notification statement to the Department of Health and Human Resources as provided in section two of this article.

(b) Within five business days after receiving any notification statement pursuant to the provisions of subsection (a) of this section, the Secretary of the Department of Health and Human Resources shall distribute a copy of the notification statement to:

1. The supervisor of each county and municipal law-enforcement office and any campus police department in the city and county where the registrant resides, is employed or attends school or a training facility;

2. The county superintendent of schools where the registrant resides, is employed or attends school or a training facility; and

3. The Child Protective Services office charged with investigating allegations of child abuse or neglect in the county where the registrant resides, is employed or attends school or a training facility.

(c) The State Police may furnish information and documentation required in connection with the registration to authorized law enforcement, campus police and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive the same, of other states within the United States and of the State of West Virginia upon proper request stating that the records will be used solely for law-enforcement-related purposes. The State Police may disclose information collected under this article to federal, state and local governmental agencies responsible for conducting preemployment checks.
(d) An elected public official, public employee or public agency is immune from civil liability for damages arising out of any action relating to the provisions of this section except when the official, employee or agency acted with gross negligence or in bad faith.

(e) The information contained in the child abuse and neglect registry is confidential, and may not be disclosed except as specifically provided in this article. The information contained in the registry with respect to an individual shall be provided to that individual promptly upon request. Individuals on the registry requesting registry information shall be afforded the opportunity to file statements correcting any misstatements or inaccuracies contained in the registry. The State Police and the Department of Health and Human Resources may disclose registry information to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign states and of the State of West Virginia upon proper request stating that the information requested is necessary in the interest of and will be used solely in the administration of official duties and the criminal laws. Agreements with other states providing for the reciprocal sharing of abuse and neglect registry information are specifically authorized. Nothing in this article would preclude disclosure of information authorized pursuant to article two-c of this chapter.

(f) An active file on requests for information by requesters shall be maintained by the State Police and the Department of Health and Human Resources for a period of one year from the date of a request.

(g) Information on the registry shall be exempt from disclosure under the freedom of information act in article one, chapter twenty-nine-b of this code.

In addition to the duties imposed by sections two and four of this article, the official in charge of the place of confinement of any person required to register under this article shall, before the person is paroled or released, inform that person of his or her duty to register. Further, the official shall obtain the full address of the person and a statement signed by the person acknowledging that the person has been informed of his or her duty to register.

§15-13-7. Failure to register or provide notice of registration changes; penalty.

(a) Except as provided in this section, any person required to register under this article who knowingly provides false information or who refuses to provide accurate information when so required by this article, or who knowingly fails to register or knowingly fails to provide a change in any information as required by this article, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in jail not more than one year, or both: Provided, That each time the person has a change in any of the registration information as required by this article and fails to register the change or changes, each failure to register each separate item of information changed shall constitute a separate offense.

(b) Any person required to register under this article who is convicted of a second or subsequent offense of failing to register or provide a change in any information as required by this article who knowingly provides false information or who refuses to provide accurate information when so required by terms of this article or who knowingly fails to register or knowingly fails to provide a change in information as required by this article is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than five years.
(c) In addition to any other penalty specified for failure to register under this article, any person under the supervision of a probation officer, parole officer or any other sanction short of confinement in jail or prison who knowingly refuses to register or who knowingly fails to provide a change in information as required by this article shall be subject to immediate revocation of probation or parole and returned to confinement for the remainder of any suspended or unserved portion of his or her original sentence.


(a) When any probation or parole officer accepts supervision of, and has legal authority over, any person required to register under this article from another state under the terms and conditions of the Interstate Compact for the Supervision of Adult Offenders established under article seven, chapter twenty-eight of this code, the officer shall give the person written notice of the registration requirements of this section and obtain a signed statement from the person required to register acknowledging the receipt of the notice. The officer shall obtain and submit to the State Police the information required in subsection (e), section two of this article.

(b) Any person:

(1) Who resides in another state or federal or military jurisdiction;

(2) Who is employed, carries on a vocation, is a student in this state or is a visitor to this state for a period of more than fifteen continuous days; and

(3) Who is required by the state, federal or military jurisdiction in which he or she resides to register in that state, federal or military jurisdiction for child abuse or neglect, or has been convicted of a violation in that state, federal or military
22 jurisdiction that is similar to a violation in this article shall
23 register in this state and otherwise comply with the provisions
24 of this article.

25 (c) Any person changing residence to this state from
26 another state or federal or military jurisdiction who is required
27 to register because of a conviction for child abuse or neglect
28 under the laws of that state or federal or military jurisdiction
29 shall register in this state.

CHAPTER 17B. MOTOR VEHICLE DRIVER’ S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3. What persons may not be licensed; exceptions.

1 (a) The division may not issue any license hereunder:

2 (1) To any person who is under the age of eighteen years:

2 Provided, That the division may issue a junior driver’s license
3 or on or after the first day of January, two thousand one, a
4 graduated driver’s license, to a person under the age of eighteen
5 years in accordance with the provisions of section three-a of
6 this article;

7 (2) To any person, as a Class A, B, C or D driver, who is
8 under the age of eighteen years;

9 (3) To any person, whose license has been suspended or
10 revoked, during the suspension or revocation;

11 (4) To any person who is an habitual drunkard or is
12 addicted to the use of narcotic drugs;

13 (5) To any person, who has previously been adjudged to be
14 afflicted with or suffering from any mental disability or disease
15 and who has not at the time of application been restored to
16 competency by judicial decree or released from a hospital for
the mentally incompetent upon the certificate of the superinten-
dent of the institution that the person is competent, and not then
unless the commissioner is satisfied that the person is compe-
tent to operate a motor vehicle with a sufficient degree of care
for the safety of persons or property;

(6) To any person who is required by this chapter to take an
examination, unless the person has successfully passed the
examination;

(7) To any person when the commissioner has good cause
to believe that the operation of a motor vehicle on the highways
by the person would be inimical to public safety or welfare.

(b) The division may not issue a license or nondriver
identification card to any person required to register as a
sexually violent predator pursuant to the provisions of article
twelve, chapter fifteen, unless he or she obtains a driver’s
license or nondriver identification card coded by the commis-
sioner to denote that he or she is a sexually violent predator as
follows:

(1) If a person is judicially determined to be a sexually
violent predator after the effective date of this section, the
sentencing court shall order the person or the agency with
custody of the person’s driver’s license or nondriver identifica-
tion card to surrender said license or card to the court. The
sentencing court shall forward to the division all driver’s
licenses or nondriver identification cards that it receives
pursuant to this section, along with a copy of the sentencing
order. If a person is registered as a sexually violent predator
pursuant to section nine, article twelve, chapter fifteen of this
code after the effective date of this section as amended and
reenacted during the first extraordinary session of the Legisla-
ture, two thousand six, the person shall surrender their driver’s
license or nondriver identification card to the division within
ten days of their registration with the State Police. Any replace-
ment driver’s license or nondriver identification card issued to
the person under this section must be coded by the commis-
sioner to denote the person is a sexually violent predator and
shall be issued at no cost to the person.

(2) Within ten business days of the effective date of the
amendments to this section made during the first extraordinary
session of the Legislature, two thousand six, the State Police
shall provide the division with the name, address and motor
vehicle information of every person registered as a sexually
violent predator in the state at that time and also provide notice
to said registrants of the requirements set forth in said amend-
ments. If a person is registered as a sexually violent predator
prior to the effective date of this section, as amended and
reenacted during the first extraordinary session of the Legisla-
ture, two thousand six, he or she shall surrender his or her
driver’s license or nondriver identification card to the division
within ten business days of his or her receipt of the notice from
the State Police required by said amendments. Any replacement
driver’s license or nondriver identification card issued to the
person under this section must be coded by the commissioner
to denote the person is a sexually violent predator and shall be
issued at no cost to the person.

(c) Upon receipt of a driver’s license or nondriver identifi-
cation card from a sentencing court or individual pursuant to
subsection (b) of this section, the division shall cancel said
license or card and note the cancellation in its records system so
as to prevent the issuance of a replacement or duplicate license
or card lacking the coded notation required by subsection (b) of
this section.

(d) Upon showing proof that a person is no longer required
to register as a sexually violent predator, the division shall, at
no charge, issue a driver’s license or nondriver identification
card without the coded notation printed upon the license. No
person issued a driver’s license or nondriver identification card
pursuant to the amendments to this section made during the first extraordinary session of the Legislature, two thousand six, may alter or deface the license or card to obscure the special marking identifying the holder as a sexually violent predator.

(e) Any person failing to comply with the provisions of subsections (b), (c) or (d) is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars or confined in jail not more than one year, or both fined and imprisoned.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15c. County boards of education; training in prevention of child abuse and neglect and child assault; regulations; funding.

(a) In recognition of the findings of the Legislature as set forth in section one, article six-c, chapter forty-nine of this code, the Legislature further finds that public schools are able to provide a special environment for the training of children, parents and school personnel in the prevention of child abuse and neglect and child assault and that child abuse and neglect prevention and child assault prevention programs in the public schools are an effective and cost-efficient method of reducing the incidents of child abuse and neglect, promoting a healthy family environment and reducing the general vulnerability of children.

(b) County boards of education shall be required, to the extent funds are provided, to establish programs for the prevention of child abuse and neglect and child assault. Such programs shall be provided to pupils, parents and school personnel as deemed appropriate. Such programs shall be in compliance with regulations to be developed by the State Board
of Education with the advice and assistance of the state Department of Health and Human Resources and the West Virginia State Police: Provided, That any such programs which substantially comply with the regulations adopted by the board and were in effect prior to the adoption of the regulations may be continued.

(c) Funds for implementing the child abuse and neglect prevention and child assault prevention programs may be allocated to the county boards of education from the children's trust fund established pursuant to the provisions of article six-c, chapter forty-nine of this code or appropriated for such purpose by the Legislature.

(d) County boards of education shall request from the State Criminal Identification Bureau the record of any and all criminal convictions relating to child abuse, sex-related offenses or possession of controlled substances with intent to deliver same for all of its future employees. This request shall be made immediately after the effective date of this section, and thereafter as warranted.

(e) Contractors or service providers or their employees may not make direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense, as defined in section two, article twelve, chapter fifteen of this code. For the purposes of this section, contractor and service provider shall be limited to any vendor, individual or entity under contract with a county school board. County school boards may require contractors and service providers to verify the criminal records of their employees before granting the above-mentioned contact or access. Where prior written consent is obtained, county school boards may obtain information from the Central Abuse Registry regarding contractors, service
providers and their employees for the purposes of this subsec-
tion. Where a contractor or service provider gives his or her
prior written consent, the county school board also may share
information provided by the Central Abuse Registry with other
county school boards for the purposes of satisfying the require-
ments of this subsection. The requirements of this subsection
shall not go into effect until the first day of July, two thousand
seven.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS
MANAGEMENT.

§25-1-22. Task Force to Study the Feasibility of Establishing a
Correctional Facility for the Incarceration and
Treatment of Sex Offenders; members; duties.

(a) There is hereby created a Task Force to Study the
Feasibility of Establishing a Correctional Facility for the
Incarceration and Treatment of Sex Offenders.

(b) The task force consists of the following members:

(1) The Secretary of the Department of Military Affairs and
Public Safety, or his or her designee;

(2) The Commissioner of the Division of Corrections, or his
or her designee;

(3) The Secretary of the Department of Health and Human
Resources, or his or her designee;

(4) The Commissioner of the Bureau for Behavioral Health
and Health Facilities, or his or her designee; and

(5) The Director of the Division of Criminal Justice
Services, or his or her designee.
(c) The task force shall designate the chair of the task force.

(d) The Legislature directs the task force to:

(1) Study whether sex offenders can be treated and rehabilitated;

(2) Study the feasibility and cost effectiveness of operating a separate correctional facility for the incarceration and treatment of sex offenders;

(3) Study the findings and recommendations from relevant national advisory committees, federal agencies, and peer-reviewed medical, correctional, and legal literature; and

(4) Identify and recommend alternatives to establishing a separate facility, if a separate facility is not feasible and cost effective.

(e) The task force may conduct inquiries and hold hearings in furtherance of its objectives and in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment.

(f) All actual and necessary travel expenses of the members of the task force shall be reimbursed by the member's employing agency. All other expenses incurred by the task force shall be paid by the Division of Corrections.

(g) The task force shall make its final report to the Governor and the Legislature regarding its findings and recommendations not later than the first day of July, two thousand seven.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

The Department of Health and Human Resources shall maintain a statewide child abuse and neglect statistical index of all substantiated allegations of child abuse or neglect cases to include information contained in the reports required under this article and any other information considered appropriate by the Secretary of the Department of Health and Human Resources. Nothing in the statistical data index maintained by the Department of Health and Human Resources may contain information of a specific nature that would identify individual cases or persons. Notwithstanding the provisions of section one, article seven, chapter forty-nine of this code, the Department of Health and Human Resources shall provide copies of the statistical data maintained pursuant to this subsection to the State Police child abuse and neglect investigations unit to carry out its responsibilities to protect children from abuse and neglect.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8B. SEXUAL OFFENSES.


§61-8B-7. Sexual abuse in the first degree.


§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.


(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or
(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

§61-8B-7. Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.
(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.


(a) Notwithstanding the provisions of section one-a, article eleven-a, section four, article eleven-b and section two, article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three, four, five, seven, eight or nine, article eight-b, chapter sixty-one of this code, are eighteen years of age or older, the victim is younger than twelve years of age and the finder of fact determines that one of the following aggravating circumstances exists:

(1) The person employed forcible compulsion in commission of the offense;

(2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two, article twelve, chapter fifteen of this code;
(3) The person was armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or

(4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, “release the victim in a safe place” means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.

(b)(1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

§61-8B-9b. Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually
violent offense, as defined in section two, article twelve, chapter fifteen of this code, against a victim under the age of twelve years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

(1) For a violation of section three of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;

(2) For a violation of section four of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;

(3) For a violation of section five of this article, the penalty shall be imprisonment in a state correctional facility for not less than five nor more than twenty-five years;

(4) For a violation of section seven of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten nor more than thirty-five years; and

(5) Notwithstanding the penalty provisions of section eight of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, shall be a felony and the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.

(b) Notwithstanding the provisions of section two, article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of section one-a, article eleven-a and section four, article eleven-b of chapter sixty-two
of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 11D. HEIGHTENED EXAMINATION AND SUPERVISION FOR CERTAIN SEX OFFENDERS.


§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

§62-11D-3. Electronic monitoring of certain sex offenders under supervision; tampering with devices; offenses and penalties.


As used in this article:

1. “Certified polygraph analyst” means a person licensed pursuant to the provisions of section five-c, article five, chapter twenty-one of this code and who:

   (A) Is certified in post conviction sex offender testing as prescribed by the American Polygraph Association;

   (B) Has completed not less than twenty hours of American Polygraph Association-approved sex offender testing training every other calendar year; and

   (C) Uses standards approved by the American Polygraph Association for sex offender testing.

2. “Electronic monitoring” means any one or a combination of the following technologies:

   (A) Voice verification;

   (B) Radio frequency;
(C) Video display/breath alcohol test;
(D) Global positioning satellite; or
(E) Global positioning satellite - cellular.

(3) "Full-disclosure polygraph" or "sexual history polygraph" means a polygraph examination administered to determine the entire sexual history of the probationer or parolee.

(4) "Maintenance test" means polygraph examination administered to determine the probationer’s or parolee’s compliance with the terms of supervision and treatment.

(5) "Sexually violent predator" means any person determined by a circuit court of this state to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code or of a similar provision in another state, federal or military jurisdiction.

§62-11D-2. Polygraph examinations as a condition of supervision for certain sex offenders released on probation, parole or on supervised release.

(a) Notwithstanding any provision of this code to the contrary, any person:

(1) Who has been determined to be a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code; or

(2) Who is required to register as a sex offender pursuant to the provisions of article twelve, chapter fifteen of this code and who is ordered by a circuit court or supervising entity to undergo polygraph examination as a condition of probation, parole or supervised release, shall, as a condition of said
(b) Any person required to undergo polygraph examination pursuant to subsection (a) of this section shall, at his or her expense, submit to at least one polygraph examination each year to answer questions relating to his or her compliance with conditions of supervision, including conditions related to treatment. Additional examinations may be required, not to exceed a total of five. The results of any examination are not admissible in evidence and are to be used solely as a risk assessment and treatment tool. Examination results shall be made available to the person under supervision, upon request.

(c) In the event a person required to submit to polygraph examinations as required by the provisions of this section is unable to pay for the polygraph examination or examinations, that person may present an affidavit reflecting the inability to pay for such testing to the circuit court of the county of supervision. If it appears to the satisfaction of the court that such person is in fact financially unable to pay for such testing, the court shall issue an order reflecting such findings and forward such order to the supervising entity. Upon receipt of such order, the supervising entity shall then be responsible for paying for such testing.

(d) Any polygraph examination conducted pursuant to the provisions of this section shall be conducted by a certified polygraph analyst.

(e) In the conduct of polygraph examinations of a sex offender performed pursuant to the provisions of this section, no certified polygraph analyst may:

(1) Conduct more than two full disclosure or sexual history polygraph examinations in a twenty-four hour period;
(2) Disclose any information gained during any full
disclosure or sexual history polygraph examination to any law-
enforcement agency or other party, other than the supervising
entity, without the supervised person’s consent, nor shall any
information or disclosure be admissible in any court of this
state, unless such information disclosed indicates the intention
or plan to commit a criminal violation of the laws of this or
another state or of the United States in which case such infor-
mation may be released only to such persons as might be
necessary solely to prevent the commission of such crime;

(3) Conduct more than two maintenance tests in a twenty-
four hour period;

(4) Conduct more than one full disclosure or sexual history
polygraph examination and more than two maintenance tests in
a twenty-four hour period; or

(5) Conduct more than five polygraph examinations of the
same sex offender in a calendar year.

(f) No polygraph examination performed pursuant to the
provisions this section may be conducted by a person who is a
sworn peace officer, within the boundaries of that officer’s
jurisdiction.

§62-11D-3. Electronic monitoring of certain sex offenders under
supervision; tampering with devices; offenses and
penalties.

(a) Notwithstanding any provisions of this code to the
contrary, any person designated as a sexually violent predator
pursuant to the provisions of section two-a, article twelve,
chapter fifteen of this code who is on probation, parole or
supervised release, shall be subject to electronic monitoring as
a condition of probation, parole or supervised release. A person
required to register as a sex offender pursuant to the provisions
of article twelve, chapter fifteen of this code may, as a condi-
tion of probation, parole or supervised release, be subject to
electronic monitoring.

(b) Upon being placed on supervision, a person required to
undergo electronic monitoring pursuant to the provisions of this
section shall be placed at a minimum on radio frequency
monitoring with curfews enforced. Following an assessment
designed to determine the level and type of electronic monitor-
ing necessary to effectuate the protection of the public, a
supervised person may be placed on a system providing a
greater or lesser degree of monitoring.

(c) A person subject to the provisions of this section shall
be responsible for the cost of the electronic monitoring. In the
event a person required to submit to electronic monitoring as
required by the provisions of this section is unable to pay for
the electronic monitoring, that person may present an affidavit
reflecting the inability to pay for such monitoring to the circuit
court of the county of supervision. If it appears to the satisfac-
tion of the court that such person is in fact financially unable to
pay for such monitoring, the court shall issue an order reflecting
such findings and forward said order to the supervising entity.
Upon receipt of such order, the supervising entity shall then be
responsible for paying for each testing.

(d) The assessment required by the provisions of subsection
(b) of this section shall be completed not later than thirty days
after the supervised person begins serving probation or parole
or supervised release. Under no circumstances may a person of
whom electronic monitoring has been mandated as a condition
of supervision be on a type of monitoring less effective than
voice verification with a curfew.

(e) Any person who intentionally alters, tampers with,
damages or destroys any electronic monitoring equipment, with
the intent to remove the device or impair its effectiveness, is
guilty of a felony and, upon conviction thereof, shall be
confined in a state correctional facility for not less than one
year nor more than ten years.

ARTICLE 11E. SEXUALLY VIOLENT PREDATOR MANAGEMENT TASK
FORCE.

§62-11E-1. Legislative findings and intent.

§62-11E-1. Legislative findings and intent.

The Legislature finds:

(1) That a small but extremely dangerous group of sexually
guilty offenders exist who do not have a mental disease or
defect that renders them appropriate for involuntary hospitaliza-
tion pursuant to chapter twenty-seven of this code, which is
intended to be a short-term civil commitment system that is
primarily designed to provide short-term treatment to individu-
als with serious mental disorders and then return them to the
community. In contrast, these offenders, known as sexually
violent predators, generally have personality disorders and/or
mental abnormalities which are largely unamenable to existing
mental illness treatment modalities and those conditions render
them likely to engage in sexually violent behavior.

(2) That the likelihood of sexually violent predators
engaging in repeat acts of predatory sexual violence is high.
The existing involuntary commitment procedure is inadequate
to address the risk to re-offend because during confinement
these predators do not have access to potential victims and
therefore they will not engage in an overt act during confine-
ment as required by the involuntary treatment act for continued
confine

(3) That the prognosis for curing sexually violent predators
is poor, the treatment needs of this population are very long
term, and the treatment modalities for this population are very
different from the traditional treatment modalities for people
appropriate for commitment under chapter twenty-seven of this
code.

(4) It is therefore the purpose of this article to establish a
public-private task force to identify and develop measures
providing for the appropriate treatment of sexually violent
predators lasting until they are no longer dangerous to the
public. The measures should reflect the need to protect the
public, to respect the needs of the victims of sexually violent
offenses, and to encourage full, meaningful participation of
sexually violent predators in treatment programs.

created; duties.

(a) There is hereby created the “Sexually Violent Predator
Management Task Force.” The task force shall consist of the
following persons:

(1) The Commissioner of the Division of Corrections, or his
or her designee;

(2) The Commissioner of the Bureau for Behavioral Health
and Health Facilities, or his or her designee;

(3) The Executive Director of the West Virginia Prosecut-
ing Attorney’s Institute, or his or her designee;

(4) The Executive Director of Public Defender Services, or
his or her designee;

(5) The Director of the Division of Criminal Justice
Services, or his or her designee;

(6) The President of the Sex Offender Registration Advi-
sory Board, or his or her designee;
(7) The Superintendent of the West Virginia State Police, or his or her designee; and

(8) Four public members appointed by the Governor with the advice and consent of the Senate as follows:

(i) A forensic psychiatrist with experience evaluating persons charged with sexually violent offenses;

(ii) A forensic psychologist with experience evaluating persons charged with sexually violent offenses;

(iii) A prosecuting attorney with experience prosecuting persons for sexually violent offenses; and

(iv) A public defender or private criminal defense attorney: Provided, That the person have experience defending persons charged with committing sexually violent offenses.

(b) The task force also may invite, as it deems necessary, other individuals with certain specialties to join the task force as members, including, but not limited to, probation officers and current or former members of the judiciary in West Virginia. The Commissioner of the Division of Corrections shall chair the task force.

(c) Each ex officio member of the task force is entitled to be reimbursed by their employing agency for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the Department of Administration. All other expenses incurred by the task force shall be paid by the Division of Corrections.

(d) It shall be the duty of the task force to develop measures for the appropriate treatment of sexually violent predators, assess resources and circumstances specific to West Virginia,
examine constitutional, statutory and regulatory requirements
with which such measures must comply, identify the adminis-
trative and financial impact of those measures and develop a
plan for implementation of the measures by a date certain. In
fulfilling those duties, the task force, at a minimum, shall:

(1) Consult with psychiatrists and psychologists regarding
the management of sexually violent predators, including, but
not limited to, their diagnosis and treatment;

(2) Evaluate current involuntary commitment procedures
set forth in chapter twenty-seven of this code and how they may
interact with the state’s management of sexually violent
predators;

(3) Survey the mental health resources offered by state
agencies, including, but not limited to, current treatment
resources for sexually violent predators in all phases of the
correctional, probation and parole systems;

(4) Assess what, if any, state resources exist for use in the
confinement of sexually violent predators;

(5) Examine the interaction between criminal penalties for
sexually violent offenses and the management of sexually
violent predators;

(6) Consider other states’ approaches to managing sexually
violent offenders released after the completion of their criminal
sentences;

(7) Conduct interviews with relevant personnel inside and
outside of state government; and

(8) Determine the fiscal impact of any of its recommenda-
tions.

(a) On or before the first day of July, two thousand seven, the task force shall submit a report setting forth their final findings and recommendations to the Legislature and the Governor.

(b) In recognition of the importance of public engagement, the task force shall have two public hearings prior to the first day of March, two thousand seven, to solicit input from citizens, mental health professionals, local law-enforcement officials, other stakeholders, and interested parties about the state’s management of sexually violent predators.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-2. Eligibility for probation.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.


§62-12-2. Eligibility for probation.

(a) All persons who are found guilty of or plead guilty to any felony, the maximum penalty for which is less than life imprisonment, and all persons who are found guilty of or plead guilty to any misdemeanor, shall be eligible for probation, notwithstanding the provisions of sections eighteen and nineteen, article eleven, chapter sixty-one of this code.

(b) The provisions of subsection (a) of this section to the contrary notwithstanding, any person who commits or attempts to commit a felony with the use, presentment or brandishing of a firearm shall be ineligible for probation. Nothing in this section shall apply to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented or brandished a firearm.
(c)(1) The existence of any fact which would make any person ineligible for probation under subsection (b) of this section because of the commission or attempted commission of a felony with the use, presentment or brandishing of a firearm shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) The amendments to this subsection adopted in the year one thousand nine hundred eighty-one:

(A) Shall apply to all applicable offenses occurring on or after the first day of August of that year;

(B) Shall apply with respect to the contents of any indictment or presentment returned on or after the first day of August of that year irrespective of when the offense occurred;

(C) Shall apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to such jury on or after the first day of August of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: Provided, That the state shall give notice in writing of its intent to seek such finding by the jury or court, as the case may be, which notice shall state with particularity the grounds upon which such finding shall be sought as fully as such grounds are otherwise required to be stated in an indictment, unless the grounds therefor are alleged in the indictment or presentment upon which the matter is being tried;

(D) Shall not apply with respect to cases not affected by such amendment and in such cases the prior provisions of this
section shall apply and be construed without reference to such
amendment; and

Insofar as such amendments relate to mandatory sentences
without probation, all such matters requiring such sentence
shall be proved beyond a reasonable doubt in all cases tried by
the jury or the court.

(d) For the purpose of this section, the term “firearm” shall
mean any instrument which will, or is designed to, or may
readily be converted to, expel a projectile by the action of an
explosive, gunpowder, or any other similar means.

(e) In the case of any person who has been found guilty of,
or pleaded guilty to, a violation of the provisions of section
twelve, article eight, chapter sixty-one of this code, the provi-
sions of article eight-c or eight-b of said chapter, or under the
provisions of section five, article eight-d of said chapter, such
person shall only be eligible for probation after undergoing a
physical, mental and psychiatric study and diagnosis which
shall include an on-going treatment plan requiring active
participation in sexual abuse counseling at a mental health
facility or through some other approved program: Provided,
That nothing disclosed by the person during such study or
diagnosis shall be made available to any law-enforcement
agency, or other party without that person’s consent, or admis-
sible in any court of this state, unless such information dis-
closed shall indicate the intention or plans of the probationer to
do harm to any person, animal, institution or property, in which
case such information may be released only to such persons as
might be necessary for protection of the said person, animal,
institution or property.

Within ninety days of the effective date of this section as
amended and reenacted during the first extraordinary session of
the Legislature, two thousand six, the Secretary of the Depart-
ment of Health and Human Resources shall propose rules and
emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) Any person who has been convicted of a violation of the provisions of article eight-b, eight-c or sections five and six, article eight-d, chapter sixty-one of this code, or of section fourteen, article two, or of sections twelve and thirteen, article eight, chapter sixty-one of this code, or of a felony violation involving a minor of section six or seven, article eight, chapter sixty-one of this code, or of a similar provision in another jurisdiction shall be required to be registered upon release on probation. Any person who has been convicted of an attempt to commit any of the offenses set forth in this subsection shall also be registered upon release on probation.

(g) The probation officer shall within three days of release of the offender, send written notice to the State Police of the release of the offender. The notice shall include:

(1) The full name of the person;

(2) The address where the person shall reside;

(3) The person’s social security number;

(4) A recent photograph of the person;

(5) A brief description of the crime for which the person was convicted;

(6) Fingerprints; and

(7) For any person determined to be a sexually violent predator as defined in section two-a, article twelve, chapter fifteen of this code, the notice shall also include:
§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b, eight-c or eight-d of said chapter shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to fifty years: Provided, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, of a violation of sections three or seven, article eight-b, chapter sixty-one of this code and sentenced pursuant to section nine-a, article eight-b, chapter sixty-one of this code, shall be no less than ten years: Provided, however, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, as a sexually violent predator pursuant to the provisions of section two-a, article twelve, chapter fifteen of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: Provided further, That, pursuant to the provisions of subsection (g) of this section, a court may modify, terminate or revoke any term of supervised release imposed pursuant to subsection (a) of this section.
(b) Any person required to be on supervised release for a minimum term of ten years or for life pursuant to the provisos of subsection (a) also shall be further prohibited from:

(1) Establishing a residence or accepting employment within one thousand feet of a school or child care facility or within one thousand feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Establishing a residence or any other living accommodation in a household in which a child under sixteen resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child’s parent;

(ii) The child’s grandparent; or

(iii) The child’s stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person’s parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: Provided, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.
(d) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by the probation office of the sentencing court or by the community corrections program established in said circuit unless jurisdiction is transferred elsewhere by order of the sentencing court.

(e) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of section nine, article twelve, chapter sixty-one of this code: Provided, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems such to no longer be appropriate or necessary and makes express findings in support thereof.

Within ninety days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, two thousand six, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(f) The sentencing court may, based upon defendant’s ability to pay, impose a supervision fee to offset the cost of supervision. Said fee shall not exceed fifty dollars per month. Said fee may be modified periodically based upon the defendant’s ability to pay.

(g) Modification of conditions or revocation. — The court may:
(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(h) Written statement of conditions. — The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently
clear and specific to serve as a guide for the defendant’s conduct and for such supervision as is required.

(i) Supervised release following revocation. — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (a) of this section, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(j) Delayed revocation. — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h) of this section, a further term of supervised release extends beyond the expiration of the term of adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.


Prior to discharging an inmate convicted of a violation of section twelve, article eight, chapter sixty-one of this code or a felony violation of the provisions of article eight-b or eight-d of said chapter at the expiration of the term of their sentence, the Division of Corrections shall perform an assessment to determine the statistical risk that the inmate will reoffend after being released from the division’s custody. Prior to releasing the inmate, the division shall forward the results of the assessment to the inmate’s supervising entity.
CHAPTER 16

(H. B. 105 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating to confidentiality of circuit court records involving guardianship of minors.

Be it enacted by the Legislature of West Virginia:

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and revocation of guardian by county commission.

(a) The circuit court or family court of the county in which the minor resides, or if the minor is a nonresident of the state, the county in which the minor has an estate, may appoint as the minor’s guardian a suitable person. The father or mother shall receive priority. However, in every case, the competency and fitness of the proposed guardian and the welfare and best interests of the minor shall be given precedence by the court when appointing the guardian.

(b) Within five days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the
The court shall hear the petition for the appointment of a guardian within ten days after the petition is filed.

(c) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian.

(d) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor: Provided, That another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(e) Other than court orders and case indexes, all other records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding or presiding over the proceeding absent a court order permitting examination of such records.
AN ACT to amend and reenact §5-10-22i of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-26t of said code, all relating to one-time supplements to retirement benefits for certain annuitants; establishing the amount and eligibility date for the one-time supplement to retirement benefits for certain annuitants under the Public Employees Retirement Act; and establishing the eligibility date for the one-time supplement to retirement benefits for certain annuitants under the State Teachers Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-10-22i of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-7A-26t 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.

18. 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22i. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent, as determined by appropriation of the Legislature, shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the first day of July, two thousand six, and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the first day of July, two thousand six.

(b) The one-time supplement provided in this section applies only to members who have retired at least five years prior to the first day of July, two thousand six, or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to the first day of July, two thousand six: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-26t. One-time supplement for certain annuitants effective July 1, 2006.

(a) A one-time supplement to retirement benefits of three percent shall be provided to all retirees that are age seventy or older and have been annuitants for at least five consecutive years as of the first day of July, two thousand six, and beneficiaries of deceased members who would have been at least seventy years of age or older and have been annuitants for at least five consecutive years as of the first day of July, two thousand six.
(b) The one-time supplement provided in this section applies only to members who have retired at least five years prior to the first day of July, two thousand six, or, if applicable, to beneficiaries of deceased members who have been receiving benefits under the retirement system at least five years prior to the first day of July, two thousand six: Provided, That the supplement provided herein is subject to any applicable limitations thereon under Section 415 of the Internal Revenue Code of 1986, as amended.

CHAPTER 18

(S. B. 1009 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §5-10-48 of the Code of West Virginia, 1931, as amended, relating to reemployment after retirement.

Be it enacted by the Legislature of West Virginia:

That §5-10-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system
and that this interest necessitates that certain limitations be placed upon an individual’s ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state, but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) “Regularly employed on a full-time basis” means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires twelve months per year service and/or requires at least one thousand forty hours of service per year in that position; (2) “temporary full-time employment or temporary part-time employment” means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) “former employee of the Legislature” means any person who has retired from employment with the Legislature and who has at least ten years’ contributing service
with the Legislature; and (4) “reemployed by the Legislature” means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed one hundred seventy-five days per calendar year.

(c) In the event a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to such additional employment, said annuity to be computed according to section twenty-two of this article. A retirant may accept temporary full-time or temporary part-time employment from a participating employer without suspending his or her retirement annuity so long as he or she does not receive annual compensation in excess of fifteen thousand dollars: *Provided,* That a retirant may be employed by the Legislature on a per diem basis without suspension of the retirement annuity if the retirant’s annual compensation from the Legislature does not exceed twenty thousand dollars.

(d) In the event a member retires and is then subsequently elected to a public office or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding such public office or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as such office holder or as a per diem reemployed former employee of the Legislature; or
(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be reappointed to the same position unless and until a continuous six-month period has passed since his or her retirement from the position: Provided, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least sixty days after the employee has retired: Provided, however, That the limitation on compensation provided by subsection (b) of this section does not apply to the reemployed former employee: Provided further, That in no event may reemployment by the Legislature of a per diem employee exceed one hundred seventy-five days per calendar year.

(e) A member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer and as an elected or appointed member of the legislative body of the state or any political subdivision may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: Provided, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(f) Notwithstanding the provisions of section twenty-seven-b of this article, any publicly elected member of the legislative
body of any political subdivision or of the state Legislature, the Clerk of the House of Delegates and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of seventy and one-half years: Provided, That the member is eligible to retire under the provisions of section twenty or twenty-one of this article: Provided, however, That the member elects to stop actively contributing to the system while receiving such in-service distributions.

(g) The provisions of section twenty-two-h of this article are not applicable to the amendments made to this section during the two thousand six regular session.

CHAPTER 19

(H. B. 106 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed June 14, 2006; in effect from passage.] [Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10 of said code; and to amend and reenact §29-22B-1408 of said code, all relating to surplus administrative funds of the state lottery commission; creating the Revenue Center Construction Fund; authorizing the deposit of certain lottery administrative funds into the fund for the construction of a new state office building; and providing for authorization to expend money in the fund.

Be it enacted by the Legislature of West Virginia:
That §29-22-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-22A-10 of said code be amended and reenacted; and that §29-22B-1408 of said code be amended and reenacted, all to read as follows:

Article
  22A. Racetrack Video Lottery.
  22B. Limited Video Lottery.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18. State lottery fund; appropriations and deposits; not part of general revenue; no transfer of state funds after initial appropriation; use and repayment of initial appropriation; allocation of fund for prizes, net profit and expenses; surplus; state lottery education fund; state lottery senior citizens fund; allocation and appropriation of net profits; Revenue Center Construction Fund.

(a) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the “state lottery fund”. The fund consists of all appropriations to the fund and all interest earned from investment of the fund and any gifts, grants or contributions received by the fund. All revenues received from the sale of lottery tickets, materials and games shall be deposited with the state treasurer and placed into the “state lottery fund”. The revenue shall be disbursed in the manner provided in this section for the purposes stated in this section and shall not be treated by the auditor and treasurer as part of the general revenue of the state.

(b) No appropriation, loan or other transfer of state funds may be made to the commission or lottery fund after the initial appropriation.
(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) Not more than fifteen percent of the gross amount received from each lottery may be allocated to and may be disbursed as necessary for fund operation and administration expenses: Provided, That for the period beginning the first day of January, two thousand two, through the thirtieth day of June, two thousand three, not more than seventeen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses.

(e) The excess of the aggregate of the gross amount received from all lotteries over the sum of the amounts allocated by subsections (c) and (d) of this section shall be allocated as net profit. In the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate to an amount not to exceed two hundred fifty thousand dollars. On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars which shall be allocated as net profit: Provided, That at the close of each of the fiscal years ending the thirtieth day of June two thousand six, two thousand seven, two thousand eight, two thousand nine, two thousand ten and two thousand eleven, the portion of the fifteen percent allowance for fund operation and administration expenses provided in subsection (d) of this section that remains unspent for fund operation and administrative expenses of the lottery in each respective fiscal year, not to exceed twenty million dollars in any fiscal year, shall be transferred to the Revenue Center Construction Fund created by subsection (l) of this section for the purpose of constructing a state office building.
(f) After first satisfying the requirements for funds dedicated to the school building debt service fund in subsection (h) of this section to retire the bonds authorized to be issued pursuant to section eight, article nine-d, chapter eighteen of this code, and then satisfying the requirements for funds dedicated to the education, arts, sciences and tourism debt service fund in subsection (i) of this section to retire the bonds authorized to be issued pursuant to section eleven-a, article six, chapter five of this code, any and all remaining funds in the state lottery fund shall be made available to pay debt service in connection with any revenue bonds issued pursuant to section eighteen-a of this article, if and to the extent needed for such purpose from time to time. The Legislature shall annually appropriate all of the remaining amounts allocated as net profits in subsection (e) of this section, in such proportions as it considers beneficial to the citizens of this state, to: (1) The lottery education fund created in subsection (g) of this section; (2) the school construction fund created in section six, article nine-d, chapter eighteen of this code; (3) the lottery senior citizens fund created in subsection (j) of this section; and (4) the division of natural resources created in section three, article one, chapter twenty of this code and the West Virginia development office as created in section one, article two, chapter five-b of this code, in accordance with subsection (k) of this section. No transfer to any account other than the school building debt service account, the education, arts, sciences and tourism debt service fund, the economic development project fund created under section eighteen-a, article twenty-two, chapter twenty-nine of this code, or any fund from which debt service is paid under subsection (c), section eighteen-a of this article, may be made in any period of time in which a default exists in respect to debt service on bonds issued by the school building authority, the state building commission, the economic development authority or which are otherwise secured by lottery proceeds. No additional transfer may be made to any account other than the school building debt service account and the education, arts, sciences and tourism
(g) There is hereby continued a special revenue fund in the state treasury which shall be designated and known as the "lottery education fund." The fund shall consist of the amounts allocated pursuant to subsection (f) of this section, which shall be deposited into the lottery education fund by the state treasurer. The lottery education fund shall also consist of all interest earned from investment of the lottery education fund and any other appropriations, gifts, grants, contributions or moneys received by the lottery education fund from any source. The revenues received or earned by the lottery education fund shall be disbursed in the manner provided below and may not be treated by the auditor and treasurer as part of the general revenue of the state. Annually, the Legislature shall appropriate the revenues received or earned by the lottery education fund to the state system of public and higher education for these educational programs it considers beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the school building debt service fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code, as a first priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio requirements on any and all revenue bonds and refunding bonds issued, or to be issued, on or after the first day of April, one thousand nine hundred ninety-four, as certified to the lottery director in accordance with the provisions of section six, article nine-d, chapter eighteen of this code. In no event
shall the monthly amount allocated exceed one million eight hundred thousand dollars, nor may the total allocation of the net profits to be paid into the school building debt service fund, as provided in this section, in any fiscal year exceed the lesser of the principal and interest requirements certified to the lottery director or eighteen million dollars. In the event there are insufficient funds available in any month to transfer the amount required to be transferred pursuant to this subsection to the school debt service fund, the deficiency shall be added to the amount transferred in the next succeeding month in which revenues are available to transfer the deficiency. A lien on the proceeds of the state lottery fund up to a maximum amount equal to the projected annual principal, interest and coverage ratio requirements, not to exceed twenty-seven million dollars annually, may be granted by the school building authority in favor of the bonds it issues which are secured by the net lottery profits.

When the school improvement bonds, secured by profits from the lottery and deposited in the school debt service fund, mature, the profits shall become available for debt service on additional school improvement bonds as a first priority from the net profits of the lottery or may at the discretion of the authority be placed into the school construction fund created pursuant to the provisions of section six, article nine-d, chapter eighteen of this code.

(i) Beginning on or before the twenty-eighth day of July, one thousand nine hundred ninety-six, and continuing on or before the twenty-eighth day of each succeeding month thereafter, as long as revenue bonds or refunding bonds are outstanding, the lottery director shall allocate to the education, arts, sciences and tourism debt service fund created pursuant to the provisions of section eleven-a, article six, chapter five of this code, as a second priority from the net profits of the lottery for the preceding month, an amount equal to one tenth of the projected annual principal, interest and coverage ratio require-
ments on any and all revenue bonds and refunding bonds
issued, or to be issued, on or after the first day of April, one
thousand nine hundred ninety-six, as certified to the lottery
director in accordance with the provisions of that section. In no
event may the monthly amount allocated exceed one million
dollars nor may the total allocation paid into the education, arts,
sciences and tourism debt service fund, as provided in this
section, in any fiscal year exceed the lesser of the principal and
interest requirements certified to the lottery director or ten
million dollars. In the event there are insufficient funds
available in any month to transfer the amount required pursuant
to this subsection to the education, arts, sciences and tourism
debt service fund, the deficiency shall be added to the amount
transferred in the next succeeding month in which revenues are
available to transfer the deficiency. A second-in-priority lien on
the proceeds of the state lottery fund up to a maximum amount
equal to the projected annual principal, interest and coverage
ratio requirements, not to exceed fifteen million dollars
annually, may be granted by the state building commission in
favor of the bonds it issues which are secured by the net lottery
profits.

When the bonds, secured by profits from the lottery and
deposited in the education, arts, sciences and tourism debt
service fund, mature, the profits shall become available for debt
service on additional bonds as a second priority from the net
profits of the lottery.

(j) There is hereby continued a special revenue fund in the
state treasury which shall be designated and known as the
"lottery senior citizens fund." The fund shall consist of the
amounts allocated pursuant to subsection (f) of this section,
which amounts shall be deposited into the lottery senior citizens
fund by the state treasurer. The lottery senior citizens fund shall
also consist of all interest earned from investment of the lottery
senior citizens fund and any other appropriations, gifts, grants,
contributions or moneys received by the lottery senior citizens
fund from any source. The revenues received or earned by the
lottery senior citizens fund shall be distributed in the manner
provided below and may not be treated by the auditor or
treasurer as part of the general revenue of the state. Annually,
the Legislature shall appropriate the revenues received or
earned by the lottery senior citizens fund to such senior citizens
medical care and other programs as it considers beneficial to
the citizens of this state.

(k) The division of natural resources and the West Virginia
development office, as appropriated by the Legislature, may use
the amounts allocated to them pursuant to subsection (f) of this
section for one or more of the following purposes: (1) The
payment of any or all of the costs incurred in the development,
construction, reconstruction, maintenance or repair of any
project or recreational facility, as these terms are defined in
section four, article five, chapter twenty of this code, pursuant
to the authority granted to it under article five, chapter twenty
of this code; (2) the payment, funding or refunding of the
principal of, interest on or redemption premiums on any bonds,
security interests or notes issued by the parks and recreation
section of the division of natural resources under article five,
chapter twenty of this code; or (3) the payment of any advertis-
ing and marketing expenses for the promotion and development
of tourism or any tourist facility or attraction in this state.

(l) A special revenue account in the state treasury is
hereby created as of the twenty-first day of June, two thousand
six, which is designated and known as the “Revenue Center
Construction Fund.” The fund shall consist of the amounts
allocated to the fund pursuant to subsection (e) of this section;
section ten, article twenty-two-a of this chapter; and section one
thousand four hundred eight, article twenty-two-b of this
chapter, which amounts shall be deposited into the fund by the
State Treasurer. In no fiscal year shall the transfer from these
three sources total more than twenty million dollars in the
aggregate. The fund shall also consist of all interest earned from
investment of the fund and any other appropriations, gifts, grants, contributions or moneys received by the fund from any source. The revenues received or earned by the fund shall be used by the State Lottery Commission to construct a new state office building subject to the provisions of subdivision (2) of this subsection.

(2) No moneys of the Revenue Center Construction Fund may be expended except upon appropriation of the Legislature and until: (A) the Capitol Building Commission has approved and submitted to the Secretary of Administration a comprehensive long term master plan for the capital improvement and development of the state capitol complex; (B) a copy of the master plan has been provided to the Joint Committee on Finance and Administration; and thereafter, (C) the Legislature by concurrent resolution authorizes construction of a new state office building and the expenditure of moneys from the fund for that purpose.

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 the fiscal years ending the thirtieth day of June, two thousand six, two thousand seven, two thousand eight, two thousand nine, two thousand ten and two thousand eleven, the term “actual costs and expenses” shall include transfers of no more than twenty million dollars in any year to the Revenue Center Construction Fund created by subsection (l), section eighteen, article twenty-two of this chapter for the purpose of constructing a state office building. 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 municipality 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 than a county described in paragraph (A) or (B) of this proviso;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the racing commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia thoroughbred development fund created under section thirteen-b, article twenty-three, chapter
nineteen of this code and the West Virginia greyhound breeding
development fund created under section ten of said article shall
receive an equal share of a total of not less than one and one-
half percent of the net terminal income;

(6) The West Virginia racing commission shall receive one
percent of the net terminal income which shall be deposited and
used as provided in section thirteen-c, article twenty-three,
chapter nineteen of this code.

(7) A licensee shall receive forty-six and one-half percent
of net terminal income.

(8)(A) The tourism promotion fund established in section
twelve, article two, chapter five-b of this code shall receive
three percent of the net terminal income: Provided, That for the
fiscal year beginning the first day of July, two thousand three,
the tourism commission shall transfer from the tourism promo-
tion 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 worker’s compensation debt reduction fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided 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 pertaining 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 com-
pleted through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive addi-
tional reports of play transactions for their respective video
lottery terminals and other marketing information not consid-
ered 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.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1408. Distribution of state’s share of gross terminal
income.

(a) The state’s share of gross terminal income is calculated
as follows:

(1) The commission shall deposit two percent of gross
terminal income into the state lottery fund for the commission’s
costs and expenses incurred in administering this article. From
this amount, not less than one hundred fifty thousand dollars
nor more than one million dollars per fiscal year, as determined
by the commission each year, shall be transferred to the
compulsive gambling treatment fund created in section 29-22A-
19 of this chapter. In the event that the percentage allotted
under this subsection for the commission’s costs and expenses
incurred in administering this article generates a surplus, the
surplus shall be allowed to accumulate to an amount not to
On a monthly basis, the director shall report to the joint committee on government and finance of the Legislature any surplus in excess of two hundred fifty thousand dollars and remit to the state treasurer the entire amount of those surplus funds in excess of two hundred fifty thousand dollars to be deposited in the fund established in section 29-22-18a of this chapter: Provided, That at the close of each of the fiscal years ending the thirtieth day of June two thousand six, two thousand seven, two thousand eight, two thousand nine, two thousand ten and two thousand eleven, the portion of the two percent allowance for administrative expenses provided in this subdivision (1) that remains unspent for costs and expenses incurred in administering this article, not to exceed twenty million dollars in any fiscal year, shall be transferred to the Revenue Center Construction Fund created by subsection (l) of section eighteen, article twenty-two of this chapter for the purpose of constructing a state office building.

(2) Gross profits are determined by deducting the percentage described in subdivision (1) of this subsection, from gross terminal income.

(3) The commission shall receive thirty percent of gross profits as defined in subdivision (2) of this subsection except as otherwise provided in this subdivision. On the first day of June, 2002, the commission shall calculate the aggregate average daily gross terminal income for all operating video lottery terminals during the preceding three month period. Thereafter, the commission shall make the calculation on the first day of the month preceding the months of October, January, April and July of each year. So long as the aggregate average gross terminal income per day for the operating video lottery terminals does not exceed sixty dollars, the commission’s share of gross profits shall continue to be thirty percent for the succeeding quarter of the year beginning the first day of July. Begin-
ning on the first day of July, 2002 and the first days of October, January, April and July in 2002 and thereafter, if the commission’s calculation of aggregate average daily gross terminal income per video lottery terminal yields an amount greater than sixty dollars, one of the following schedules apply: If the amount is greater than sixty dollars per day but not greater than eighty dollars per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-four percent; if the amount is greater than eighty dollars per day but not greater than one hundred dollars per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be thirty-eight percent; if the amount is greater than one hundred dollars per day but not greater than one hundred twenty dollars per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-two percent; if the amount is greater than one hundred twenty dollars per day but not greater than one hundred forty dollars per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be forty-six percent; if the amount is greater than one hundred forty dollars per day, the commission’s share of gross profits for the ensuing quarter beginning the first day of the quarter of the year described in this subdivision shall be fifty percent. This amount shall be known as net terminal income.

(b) Net terminal income shall be distributed by the commission as follows:

(1)(A) Beginning the first day of July, 2002, a county and the incorporated municipalities within that county shall receive two percent of the net terminal income generated by limited video lottery terminals located within the county;
(B) From this two percent of net terminal income, each municipality shall receive a share that bears the same proportion to the total two percent of net terminal income as the population of the municipality bears to the total population of the county as determined by the most recent decennial United States census of population, and the county shall receive the remaining portion of the two percent of net terminal income; and

(2) Any remaining funds shall be deposited into the state excess lottery revenue fund established in section eighteen-a, article twenty-two of this chapter.

(c) The licensed operators and limited video lottery retailers shall receive the balance of gross terminal income remaining after deduction of the state’s share as calculated pursuant to this section.

CHAPTER 20

(H. B. 102 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect July 1, 2006.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §5A-6-4 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Chief Technology Officer; providing for the authority to bill state spending units for evaluations performed and technical assistance provided by the Chief Technology Officer.

Be it enacted by the Legislature of West Virginia:
That §5A-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 6. OFFICE OF TECHNOLOGY.

§5A-6-4. Powers and duties of the Chief Technology Officer; generally.

(a) With respect to all state spending units the Chief Technology Officer may:

1. Develop an organized approach to information resource management for this state;

2. Provide, with the assistance of the Information Services and Communications Division of the Department of Administration, technical assistance to the administrators of the various state spending units in the design and management of information systems;

3. Evaluate, in conjunction with the Information Services and Communications Division, the economic justification, system design and suitability of information equipment and related services, and review and make recommendations on the purchase, lease or acquisition of information equipment and contracts for related services by the state spending units;

4. Develop a mechanism for identifying those instances where systems of paper forms should be replaced by direct use of information equipment and those instances where applicable state or federal standards of accountability demand retention of some paper processes;

5. Develop a mechanism for identifying those instances where information systems should be linked and information shared, while providing for appropriate limitations on access and the security of information;
(6) Create new technologies to be used in government, convene conferences and develop incentive packages to encourage the utilization of technology;

(7) Engage in any other activities as directed by the Governor;

(8) Charge a fee to the state spending units for evaluations performed and technical assistance provided under the provisions of this section. All fees collected by the Chief Technology Officer shall be deposited in a special account in the State Treasury to be known as the Chief Technology Officer Administration Fund. Expenditures from the fund shall be made by the Chief Technology Officer for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: Provided, That the provisions of section eighteen, article two, chapter eleven-b of this code shall not operate to permit expenditures in excess of the spending authority authorized by the Legislature. Amounts collected which are found to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature;

(9) Monitor trends and advances in information technology and technical infrastructure;

(10) Direct the formulation and promulgation of policies, guidelines, standards and specifications for the development and maintenance of information technology and technical infrastructure, including, but not limited to:

(A) Standards to support state and local government exchange, acquisition, storage, use, sharing and distribution of electronic information;
(B) Standards concerning the development of electronic transactions, including the use of electronic signatures;

(C) Standards necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the state receive the greatest possible security, value and convenience from investments made in technology;

(D) Guidelines directing the establishment of statewide standards for the efficient exchange of electronic information and technology, including technical infrastructure, between the public and private sectors;

(E) Technical and data standards for information technology and related systems to promote efficiency and uniformity;

(F) Technical and data standards for the connectivity, priorities and interoperability of technical infrastructure used for homeland security, public safety and health and systems reliability necessary to provide continuity of government operations in times of disaster or emergency for all state, county and local governmental units; and

(G) Technical and data standards for the coordinated development of infrastructure related to deployment of electronic government services among state, county and local governmental units;

(11) Periodically evaluate the feasibility of subcontracting information technology resources and services, and to subcontract only those resources that are feasible and beneficial to the state;

(12) Direct the compilation and maintenance of an inventory of information technology and technical infrastructure of the state, including infrastructure and technology of all state, county and local governmental units, which may include
personnel, facilities, equipment, goods and contracts for
service, wireless tower facilities, geographic information
systems and any technical infrastructure or technology that is
used for law enforcement, homeland security or emergency
services;

(13) Develop job descriptions and qualifications necessary
to perform duties related to information technology as outlined
in this article; and

(14) Promulgate legislative rules, in accordance with the
provisions of chapter twenty-nine-a of this code, as may be
necessary to standardize and make effective the administration
of the provisions of article six of this chapter.

(b) With respect to executive agencies, the Chief Technol-
ogy Officer may:

(1) Develop a unified and integrated structure for informa-
tion systems for all executive agencies;

(2) Establish, based on need and opportunity, priorities and
time lines for addressing the information technology require-
ments of the various executive agencies of state government;

(3) Exercise authority delegated by the Governor by
executive order to overrule and supersede decisions made by
the administrators of the various executive agencies of govern-
ment with respect to the design and management of information
systems and the purchase, lease or acquisition of information
equipment and contracts for related services;

(4) Draw upon staff of other executive agencies for advice
and assistance in the formulation and implementation of
administrative and operational plans and policies; and

(5) Recommend to the Governor transfers of equipment and
human resources from any executive agency and the most
effective and efficient uses of the fiscal resources of executive agencies, to consolidate or centralize information-processing operations.

(c) The Chief Technology Officer may employ the personnel necessary to carry out the work of the Office of Technology and may approve reimbursement of costs incurred by employees to obtain education and training.

(d) The Chief Technology Officer shall develop a comprehensive, statewide, four-year strategic information technology and technical infrastructure policy and development plan to be submitted to the Governor and the Joint Committee on Government and Finance. A preliminary plan shall be submitted by the first day of December, two thousand six, and the final plan shall be submitted by the first day of June, two thousand seven. The plan shall include, but not be limited to:

(A) A discussion of specific projects to implement the plan;

(B) A discussion of the acquisition, management and use of information technology by state agencies;

(C) A discussion of connectivity, priorities and interoperability of the state’s technical infrastructure with the technical infrastructure of political subdivisions and encouraging the coordinated development of facilities and services regarding homeland security, law enforcement and emergency services to provide for the continuity of government operations in times of disaster or emergency;

(D) A discussion identifying potential market demand areas in which expanded resources and technical infrastructure may be expected;

(E) A discussion of technical infrastructure as it relates to higher education and health;
(F) A discussion of the use of public-private partnerships in the development of technical infrastructure and technology services; and

(G) A discussion of coordinated initiatives in website architecture and technical infrastructure to modernize and improve government to citizen services, government to business services, government to government relations and internal efficiency and effectiveness of services, including a discussion of common technical data standards and common portals to be utilized by state, county and local governmental units.

(e) The Chief Technology Officer shall oversee telecommunications services used by state spending units for the purpose of maximizing efficiency to the fullest possible extent. The Chief Technology Officer shall establish microwave or other networks and LATA hops; audit telecommunications services and usage; recommend and develop strategies for the discontinuance of obsolete or excessive utilization; participate in the renegotiation of telecommunications contracts; and encourage the use of technology and take other actions necessary to provide the greatest value to the state.

CHAPTER 21

(H.B.104 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 28, 2006.]

AN ACT to amend and reenact §36-8-13 of the Code of West Virginia, 1931, as amended, relating to unclaimed property;
increasing the maximum amount that may be transferred from the Unclaimed Property Trust Fund to the Prepaid Tuition Escrow Fund to one million dollars annually.

Be it enacted by the Legislature of West Virginia:

That §36-8-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 8. THE UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under section twelve of this article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including without limitation the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.
(c) The Unclaimed Property Trust Fund is continued within the State Treasury. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) On or before the fifteenth day of December of each year and after receipt of a report from the Chairman of the Board of Trustees of the West Virginia College Prepaid Tuition and Savings Program stating the amount certified by an actuary in accordance with the provisions of section six, article thirty, chapter eighteen of this code, notwithstanding any provision of this code to the contrary, the administrator shall transfer the sum of money certified by the actuary from the Unclaimed Property Trust Fund to the Prepaid Tuition Trust Escrow Fund, the amount transferred not to exceed one million dollars annually.

(e) After transferring any money required by subsection (d) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

CHAPTER 22

(H. B. 107 — By Delegate Wysong)

[Passed June 14, 2006; in effect from passage.]
[Approved by the Governor on June 28, 2006.]

AN ACT to authorize the Jefferson County Parks and Recreation Commission to transfer ownership of certain properties owned by the Commission.
Be it enacted by the Legislature of West Virginia:

§1. JEFFERSON COUNTY PARKS AND RECREATION COMMISSION.

(a) The Jefferson County Parks and Recreation Commission is authorized to convey ownership of any or all of the parcel or parcels of land constituting Evitts Run Park, which is located within the city limits of the city of Charles Town, to the city of Charles Town, West Virginia.

(b) The Jefferson County Parks and Recreation Commission is further authorized to convey ownership to the Blue Ridge Mountain Volunteer Fire Department for the purpose of locating a new fire station for use by the fire department, any portion of the parcel of land conveyed to the Commission by C & R Development, L.L.C., described as "Parcel A, containing 10.99970 acres as the same is described on a plat entitled 'Final Plat Mission Ridge' made by William H. Gordon Associated Inc. dated February 24, 2006," as recorded in the Office of the Clerk of the County Commission of Jefferson County, West Virginia, and conveyed to the Commission on the twelfth day of April, two thousand six.
AN ACT supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, as amended known as the budget bill, all supplementing and amending the appropriations, as specified herein, with all necessary adjustments of increase, (all other items and language of appropriations of such funds, as set forth in the budget bill, to remain unchanged and unaffected), and new appropriations provided for by this legislation for the fiscal year ending the thirtieth day of June, two thousand six.
WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year 2006 less net appropriation balances forwarded and regular appropriations for fiscal year 2006; and

WHEREAS, It appears from the Governor’s statement of the state fund - general revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor submitted to the legislature a statement of the state road fund, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five, and further included the estimate of revenues for the fiscal year two thousand six, less regular appropriations for the fiscal year two thousand six; and

WHEREAS, It appears from the governor’s statement of the state road fund there now remains an unappropriated balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor has established that there now remains an unappropriated balance in various other funds as specified herein, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:
That fund nos. 0180, 0101, 0102, 0116, 0126, 0131, 0132, 0135, 0150, 0155, 0186, 0203, 0230, 0210, 0220, 0223, 0226, 0557, 0588, 0246, 0250, 0606, 0253, 0256, 0260, 0265, 0277, 0280, 0303, 0306, 0313, 0314, 0317, 0390, 0573, 0320, 0294, 0293, 0296, 0300, 0310, 0270, 0273, 0550, 0400, 0407, 0525, 0416, 0403, 0430, 0433, 0440, 0443, 0446, 0450, 0453, 0456, 0460, 0436, 0546, 0570, 0585, 0465, 0470, 0595, 0593, 0506, 0581, 0582, 0420, 0596, 0589, 0586, 9007, 9017, 1206, 1225, 1234, 1235, 1401, 1408, 1412, 1446, 1507, 1513, 1612, 2041, 2220, 2440, 2521, 2531, 3081, 3084, 3100, 3162, 3187, 3188, 3191, 3192, 3200, 3203, 3205, 3253, 3355, 3937, 3959, 3960, 3508, 3542, 3288, 3023, 3024, 3321, 3322, 3323, 3324, 3325, 3331, 3332, 3333, 3336, 3340, 3487, 3490, 3371, 5425, 5106, 5124, 5144, 5156, 5163, 5172, 5183, 5214, 5375, 5090, 5094, 5185, 5454, 6362, 6501, 6527, 6675, 6152, 6386, 3041, 7073, 7150, 7151, 7152, 7253, 7304, 7305, 7351, 7352, 8213, 8214, 8215, 8216, 4903, 4179, 5475, 8517, 8520, 8623, 8624, 8625, 8627, 8635, 8646, 8676, 8671, 8797, 8800, 8807, 8736, 8737, 8854, 8834, 8838, 8703, 8704, 8705, 8706, 8707, 8709, 8712, 8713, 8714, 8715, 8718, 8720, 8734, 8708, 8723, 8802, 8725, 8722, 8726, 8727, 8741, 8728, 8803, 8855, 8787, 8745, 8724, 8743, 8744, 8799, 8746, 8888, 8750, 8753, 8793, 8794, 8825, 8757, 8816, 8817, 8829, and 8833 as appropriated by chapter sixteen, acts of the legislature, regular session, two thousand five, as amended, known as the budget bill, be supplemented and amended, as specified herein, and with all necessary adjustments of increase, (all other items and language of appropriations of such funds, as set forth in the budget bill, to remain unchanged and unaffected), and new appropriations provided for by this legislation to be increased as follows:

1 Section 1. Appropriations from general revenue.

2 JUDICIAL

4—Supreme Court—

General Judicial

5 Fund 0180 FY 2006 Org 2400
<p>| | | | | |</p>
<table>
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<tbody>
<tr>
<td>9</td>
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<td>Personal Services (R) ............... 001</td>
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**EXECUTIVE**

5—*Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2006 Org 0100

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<td>14</td>
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<td>9</td>
<td>Pharmaceutical Cost</td>
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<tr>
<td>16</td>
<td>10</td>
<td>Management Council ............... 796</td>
<td>1,200</td>
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</table>

6—*Governor’s Office—*

*Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2006 Org 0100

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8—*Auditor’s Office—*

*General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2006 Org 1200

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<td>26</td>
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<td>Personal Services ................. 001</td>
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Ch. 1] APPROPRIATIONS 2309

9—Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2006 Org 1300

| 30 | 1 | Personal Services | 001 | $20,790 |
| 31 | 6 | Abandoned Property Program | 118 | 2,700 |
| 32 | 7 | Tuition Trust Fund (R) | 692 | 900 |

10—Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2006 Org 1400

| 36 | 1 | Personal Services | 001 | $65,298 |
| 37 | 5 | Animal Identification Program | 039 | 630 |
| 38 | 8 | Gypsy Moth Program (R) | 119 | 14,058 |
| 39 | 10 | Black Fly Control (R) | 137 | 600 |
| 40 | 14 | Microbiology Program (R) | 785 | 1,200 |
| 41 | 15 | Moorefield Agriculture Center (R) | 786 | 9,000 |
| 42 | 18 | Logan Farmers Market | 501 | 600 |

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2006 Org 1400

| 46 | 1 | Personal Services | 001 | $8,400 |
| 47 | 5 | Soil Conservation Projects (R) | 120 | 13,728 |
| 48 | 6 | Maintenance of Flood Control Projects (R) | 522 | 19,200 |

12—Department of Agriculture—

Meat Inspection
APPROPRIATIONS [Ch. 1

(WV Code Chapter 19)

Fund 0135 FY 2006 Org 1400

1 Unclassified-Total ............... 096 $ 11,700

14—Attorney General

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

Fund 0150 FY 2006 Org 1500

1 Personal Services (R) ............ 001 $ 90,342
6 Better Government Bureau ........ 740 1,992

15—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2006 Org 1600

1 Personal Services ................. 001 $ 13,380

DEPARTMENT OF ADMINISTRATION

17—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2006 Org 0201

1 Unclassified .................... 099 $ 1,308

19—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2006 Org 0209
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<td>74</td>
<td>GAAP Project (R)</td>
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<td>0213</td>
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<td>75</td>
<td><strong>20—Division of General Services</strong></td>
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<tr>
<td>76</td>
<td>(WV Code Chapter 5A)</td>
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<tr>
<td>77</td>
<td>Fund 0230 FY 2006 Org 0211</td>
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<td>78</td>
<td>Personal Services</td>
<td>0210</td>
<td>0213</td>
<td>$13,338</td>
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<td>79</td>
<td><strong>21—Division of Purchasing</strong></td>
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<td>80</td>
<td>(WV Code Chapter 5A)</td>
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<td>81</td>
<td>Fund 0210 FY 2006 Org 0213</td>
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<td>Personal Services</td>
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<td>0219</td>
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<td>83</td>
<td><strong>23—Education and State Employees’ Grievance Board</strong></td>
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<td>84</td>
<td>(WV Code Chapter 18)</td>
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<td>85</td>
<td>Fund 0220 FY 2006 Org 0219</td>
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<td>86</td>
<td>Personal Services</td>
<td>0223</td>
<td>0220</td>
<td>$5,430</td>
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<td>87</td>
<td><strong>24—Ethics Commission</strong></td>
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<td>88</td>
<td>(WV Code Chapter 6B)</td>
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<td>89</td>
<td>Fund 0223 FY 2006 Org 0220</td>
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<td>$2,430</td>
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<td>91</td>
<td><strong>25—Public Defender Services</strong></td>
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<td>92</td>
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<td>0226</td>
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<td>Personal Services</td>
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<td>0557</td>
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<td>0228</td>
<td>Forensic Medical Examinations (R)</td>
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<td>0588</td>
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<td>Unclassified-Total (R)</td>
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<td>0305</td>
<td>Personal Services</td>
<td>$31,200</td>
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**28-West Virginia Prosecuting Attorneys Institute**

**29-Children’s Health Insurance Agency**

**DEPARTMENT OF COMMERCE**

**29a-West Virginia Development Office-**

**Division of Tourism**

**30-Division of Forestry**
Ch. 1] APPROPRIATIONS 2313

31-Department of Commerce-
Office of the Secretary
(WV Code Chapter 19)

<table>
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<tr>
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<td>0606</td>
<td>2006</td>
<td>0327</td>
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<tbody>
<tr>
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<td>Unclassified-Total</td>
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32-Geological and Economic Survey
(WV Code Chapter 29)

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<th>Fund</th>
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<td>5</td>
<td>Mineral Mapping System (R)</td>
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33-West Virginia Development Office
(WV Code Chapter 5B)

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<td>0307</td>
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<td>8</td>
<td>Partnership Grants (R)</td>
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<td>17</td>
<td>Small Business Financial Assistance (R)</td>
<td>$5,328</td>
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<td>28</td>
<td>Leverage Technology and Small Business Development Program (R)</td>
<td>$5,916</td>
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<td>33</td>
<td>Small Business Work Force (R)</td>
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34-Division of Labor
(WV Code Chapters 21 and 47)

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<td>Division of Natural Resources</td>
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<td>(WV Code Chapter 20)</td>
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<td>Fund 0265 FY 2006 Org 0310</td>
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<td>Personal Services ............... 001</td>
<td>$ 183,348</td>
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<td>140</td>
<td>Litter Control Conservation Officers 564</td>
<td>1,800</td>
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<td>141</td>
<td>Upper Mud River Flood Control .... 654</td>
<td>1,200</td>
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<td>142</td>
<td>Law Enforcement .................. 806</td>
<td>12,300</td>
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<td>36-Division of Miners' Health, Safety and Training</td>
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<td>(WV Code Chapter 22)</td>
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<td>Fund 0277 FY 2006 Org 0314</td>
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<td>Personal Services ............... 001</td>
<td>$ 54,600</td>
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<td>37-Board of Coal Mine Health and Safety</td>
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<td>(WV Code Chapter 22)</td>
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<td>Fund 0280 FY 2006 Org 0319</td>
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<td>DEPARTMENT OF EDUCATION</td>
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<td></td>
<td>39-State Department of Education-</td>
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<tr>
<td></td>
<td>School Lunch Program</td>
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<tr>
<td></td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td>Fund 0303 FY 2006 Org 0402</td>
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<tr>
<td>156</td>
<td>Personal Services ............... 001</td>
<td>$ 4,307</td>
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</table>
157 40-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2006 Org 0402

160 1 Personal Services $13,312

41-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2006 Org 0402

164 1 Personal Services $103,991
165 11 HVAC Technicians 3,524
166 13 FBI Checks 1,152
167 15 Foreign Student Education (R) 784
168 23 Regional Education Service Agencies 165,564

42-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2006 Org 0402

173 2 Special Education-Institutions $48,279
174 3 Education of Juveniles Held in
175 4 Predispositional Juvenile
176 5 Detention Centers 7,560
177 6 Education of Institutionalized
178 7 Juveniles and Adults 147,890

43-State Department of Education-

State Aid to Schools
2316  

APPROPRIATIONS  

(WV Code Chapters 18 and 18A)  

181  

Fund 0317 FY 2006 Org 0402  

183  1 Other Current Expenses ............... 022 $ 4,319,702  
184  2 Professional Educators ............... 151 26,280,044  
185  3 Service Personnel .................... 152 8,277,566  
186  4 Fixed Charges ....................... 153 3,165,477  
187  13 Teachers’ Retirement System ...... 019 5,183,642  

44-State Board of Education-  

Vocational Division  

(WV Code Chapters 18 and 18A)  

191  

Fund 0390 FY 2006 Org 0402  

192  1 Personal Services .................... 001 $ 16,092  
193  8 Vocational Aid ....................... 148 246,808  
194  9 Adult Basic Education ................ 149 74,906  
195  11 Technical and Secondary Program  
196  12 Improvement Staff ................... 330 2,138  
197  13 GED Testing ......................... 339 3,524  
198  14 Aquaculture Support ................ 769 783  

45-State Board of Education-  

Division of Educational Performance Audits  

(WV Code Chapters 18 and 18A)  

201  

Fund 0573 FY 2006 Org 0402  

203  1 Personal Services .................... 001 $ 5,873  

46-West Virginia Schools for the Deaf and the Blind  

(WV Code Chapters 18 and 18A)
206 Fund 0320 FY 2006 Org 0403

207 1 Personal Services ................ 001 $ 171,825

208 DEPARTMENT OF EDUCATION AND THE ARTS

47-Department of Education and the Arts-

Office of the Secretary

(WV Code Chapter 5F)

212 Fund 0294 FY 2006 Org 0431

213 1 Unclassified (R) .................... 099 $ 5,460
214 2 Center for Professional Development (R) 115 4,800
215 3 Center for Professional Development-
216 4 Principals’ Academy (R) ............ 415 600

48-Division of Culture and History

(WV Code Chapter 29)

218

219 Fund 0293 FY 2006 Org 0432

220 1 Personal Services ................ 001 $ 47,010

49-Library Commission

(WV Code Chapter 10)

222

223 Fund 0296 FY 2006 Org 0433

224 1 Personal Services ................ 001 $ 29,100

50-Educational Broadcasting Authority

(WV Code Chapter 10)
2318 APPROPRIATIONS [Ch. 1
227 Fund 0300 FY 2006 Org 0439
228 1 Personal Services ............... 001 $ 52,800
229 51-State Board of Rehabilitation-
230 Division of Rehabilitation Services
231 (WV Code Chapter 18)
232 Fund 0310 FY 2006 Org 0932
233 1 Personal Services ............... 001 $ 141,244
234 DEPARTMENT OF ENVIRONMENTAL
235 PROTECTION
236 52-Environmental Quality Board
237 (WV Code Chapter 20)
238 Fund 0270 FY 2006 Org 0311
239 1 Personal Services ............... 001 $ 600
240 53-Division of Environmental Protection
241 (WV Code Chapter 22)
242 Fund 0273 FY 2006 Org 0313
243 1 Personal Services ............... 001 $ 41,412
244 11 Dam Safety ..................... 607 1,200
245 12 Office of Water Resources
246 13 Non-Enforcement Activity .... 855 11,820
247 54-Air Quality Board
248 (WV Code Chapter 16)
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<td>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</td>
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<td>252</td>
<td>55-Department of Health and Human Resources-</td>
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<td>Office of the Secretary</td>
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<td>258</td>
<td>Central Office</td>
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<td>259</td>
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<td>Personal Services</td>
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<td>262</td>
<td>Level 1, 2 and 3 Trauma Centers</td>
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<td>Chief Medical Examiner</td>
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<td>Safe Drinking Water Program</td>
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<td>265</td>
<td>Basic Public Health Services Support</td>
<td>212</td>
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<td>266</td>
<td>Cancer Registry</td>
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<td>267</td>
<td>State EMS Technical Assistance</td>
<td>379</td>
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<td>Statewide EMS Program Support</td>
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<td>Vaccine for Children</td>
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<td>Tuberculosis Control</td>
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<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R)</td>
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### Appropriations

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<td>Epidemiology Support</td>
<td>626 3,630</td>
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<td>277</td>
<td>Primary Care Support</td>
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<td>State Aid to Local Health Departments</td>
<td>702 500,000</td>
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<td>279</td>
<td>Osteoporosis Prevention Fund</td>
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**57-Consolidated Medical Service Fund**

(WV Code Chapter 16)

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<td>0525 FY 2006 Org 0506</td>
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<td>283</td>
<td>1 Personal Services</td>
<td>001 $10,500</td>
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<tr>
<td>284</td>
<td>8 Institutional Facilities Operations</td>
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**59-Human Rights Commission**

(WV Code Chapter 5)

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<td>288</td>
<td>1 Personal Services</td>
<td>001 $14,700</td>
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**60-Division of Human Services**

(WV Code Chapters 9, 48 and 49)

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<tr>
<td>292</td>
<td>1 Personal Services</td>
<td>001 $507,873</td>
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<td>293</td>
<td>5 Child Care Development</td>
<td>144 4,500</td>
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<tr>
<td>294</td>
<td>6 Medical Services Contracts and Office</td>
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<td>295</td>
<td>7 of Managed Care</td>
<td>183 3,150</td>
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<td>296</td>
<td>16 Child Protective Services Case Workers</td>
<td>468 224,826</td>
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<td>297</td>
<td>18 OSCAR and RAPIDS</td>
<td>515 6,375</td>
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<tr>
<td>298</td>
<td>21 Child Welfare System</td>
<td>603 15,000</td>
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<tr>
<td>299</td>
<td>22 Commission for the Deaf and</td>
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<td>300</td>
<td>23 Hard of Hearing</td>
<td>704 2,400</td>
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<td>301</td>
<td>25 Medicaid Auditing</td>
<td>706 6,150</td>
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</table>
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 $ 3,000

62-Adjutant General-
State Militia

(WV Code Chapter 15)

Fund 0433 FY 2006 Org 0603

1 Personal Services .................. 001 $ 4,800
4 Unclassified (R) .................. 099 14,850

64-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2006 Org 0605

1 Personal Services .................. 001 $ 3,600

65-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2006 Org 0606

9 Early Warning Flood System .... 877 $ 900
66-Division of Corrections-

Central Office

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

Fund 0446 FY 2006 Org 0608

1 Personal Services . . . . . . . . . . . . . . . . 001 $ 5,880

67-Division of Corrections-

Correctional Units

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

Fund 0450 FY 2006 Org 0608

3 Charleston Work Release ............... 456 $ 15,300
4 Beckley Correctional Center ........... 490 15,300
5 Huntington Work Release ............... 495 13,200
6 Anthony Center . . . . . . . . . . . . . . . . 504 67,080
7 Huttonsville Correctional Center . . . 514 220,620
8 Northern Correctional Facility . . . . . 534 93,030
10 Pruntytown Correctional Center . . . 543 94,530
13 Corrections Academy ................. 569 14,400
14 Martinsburg Correctional Center . . . 663 30,912
15 Parole Services . . . . . . . . . . . . . . . . 686 32,286
16 Special Services . . . . . . . . . . . . . . . . 687 21,480
18 St. Mary’s Correctional Facility . . . 881 178,008
19 Denmar Correctional Facility . . . . . 882 61,530
20 Ohio County Correctional Facility . . . 883 21,900
21 Mt. Olive Correctional Facility . . . . 888 250,020
22 Lakin Correctional Facility . . . . . . 896 102,930

68-West Virginia State Police

(WV Code Chapter 15)
<table>
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<th>Ch. 1] APPROPRIATIONS 2323</th>
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<tr>
<td>350</td>
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<td>355</td>
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</table>

69-Division of Veterans’ Affairs

(WV Code Chapter 9A)

| 359 | 1 Personal Services ............... 001 | $ 34,080 |
| 360 | 6 Veterans’ Nursing Home ........... 286 | 1,200 |

70-Division of Veterans’ Affairs—Veterans’ Home

(WV Code Chapter 9A)

| 365 | 1 Personal Services ............... 001 | $ 19,200 |

71-Fire Commission

(WV Code Chapter 29)

| 369 | 1 Safe Schools Hotline—Total ........ 093 | $ 3,000 |

72-Division of Criminal Justice Services

(WV Code Chapter 15)

<p>| 372 | Fund 0546 FY 2006 Org 0620 |</p>
<table>
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<tr>
<th>Line</th>
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<td>375</td>
<td>73-Division of Juvenile Services</td>
<td>0570</td>
<td>0621</td>
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<td>376</td>
<td>(WV Code Chapter 49)</td>
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<td>0621</td>
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<td>Fund 0570 FY 2006 Org 0621</td>
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<td>Robert L. Shell Juvenile Center (R)</td>
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<td>North Central Regional Juvenile</td>
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<td>0621</td>
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<td>Tiger Morton Center (R)</td>
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<td>Donald R. Kuhn Juvenile Center (R)</td>
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<td>J.M. “Chick” Buckbee</td>
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<td>0621</td>
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<td>391</td>
<td>Juvenile Center (R)</td>
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<td>Davis Canine (R)</td>
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<td>394</td>
<td>The Academy (R)</td>
<td>0570</td>
<td>0621</td>
<td>600</td>
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| 395  | 74-Division of Protective Services | 0585 | 0622 |       |
| 396  | (WV Code Chapter 5F) | 0585 | 0622 |       |
| 397  | Fund 0585 FY 2006 Org 0622 | 0585 | 0622 |       |
| 398  | Personal Services | 0585 | 0622 | $23,400 |

| 399  | DEPARTMENT OF REVENUE | 0585 | 0622 |       |
| 400  | 75-Office of the Secretary | 0585 | 0622 |       |
Ch. 1] APPROPRIATIONS 2325

(WV Code Chapter 11)

Fund 0465 FY 2006 Org 0701

| 403 | Unclassified-Total (R) | 096 | $ 3,000 |

76-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2006 Org 0702

| 407 | Personal Services (R) | 001 | $ 277,800 |

77-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2006 Org 0703

| 411 | Unclassified | 099 | $ 6,000 |

78-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2006 Org 0709

| 415 | Unclassified-Total (R) | 096 | $ 6,000 |

DEPARTMENT OF TRANSPORTATION

80-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2006 Org 0804

| 420 | Unclassified | 099 | $ 2,700 |
| 2326 | APPROPRIATIONS | [Ch. 1 |
| 421 | 82-Public Port Authority |
| 422 | (WV Code Chapter 17) |
| 423 | Fund 0581 FY 2006 Org 0806 |
| 424 | 1 Unclassified (R) ................. 099 | $1,200 |
| 425 | 83-Aeronautics Commission |
| 426 | (WV Code Chapter 29) |
| 427 | Fund 0582 FY 2006 Org 0807 |
| 428 | 1 Unclassified (R) ................. 099 | $1,200 |
| 429 | BUREAU OF SENIOR SERVICES |
| 430 | 84-Bureau of Senior Services |
| 431 | (WV Code Chapter 29) |
| 432 | Fund 0420 FY 2006 Org 0508 |
| 433 | 1 Personal Services ................. 001 | $1,953 |
| 434 | HIGHER EDUCATION |
| 435 | 85-West Virginia Council for |
| 436 | Community and Technical College Education- |
| 437 | Control Account |
| 438 | (WV Code Chapter 18B) |
| 439 | Fund 0596 FY 2006 Org 0420 |
| 440 | 1 New River Community and Technical College | |
| 441 | 2 of Bluefield State College ........ 358 | $29,964 |
The increased appropriations shall be used solely for salary increases.

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

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</table>

Fund 0589 FY 2006 Org 0441
The increased appropriations shall be used solely for salary increases.

Sec. 2. Appropriations from state road fund.
DEPARTMENT OF TRANSPORTATION

90-Division of Motor Vehicles

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

Fund 9007 FY 2006 Org 0802

State
Road
Activity Fund

9 1 Personal Services .................. 001 $ 445,950
10 3 Employee Benefits .............. 010 80,940

91-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2006 Org 0803

14 14 PSC Weight Enforcement ....... 345 67,530

Sec. 3. Appropriations from other funds.

EXECUTIVE

94-Auditor’s Office-

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2006 Org 1200

Other
Activity Funds

9 1 Personal Services .................. 001 $ 6,786
10 3 Employee Benefits .............. 010 1,232
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<th>FY</th>
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<th>Securities Regulation Fund</th>
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<td>Fund 1225 FY 2006 Org 1200</td>
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<td>1 Personal Services ................. 001 $ 22,059</td>
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<td>3 Employee Benefits ............... 010 4,004</td>
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<th>Purchasing Card Administration Fund</th>
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<td>Fund 1234 FY 2006 Org 1200</td>
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<td>Fund 1235 FY 2006 Org 1200</td>
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<td>1 Personal Services ................. 001 $ 37,863</td>
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<td>32</td>
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<td>3 Employee Benefits .................. 010</td>
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<td>101-Department of Agriculture-</td>
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<td>35</td>
<td>West Virginia Rural Rehabilitation Program</td>
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<td>(WV Code Chapter 19)</td>
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<td>Fund 1408 FY 2006 Org 1400</td>
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<td>3 Employee Benefits .................. 010</td>
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<td>103-Department of Agriculture-</td>
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<td>Farm Operating Fund</td>
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<td>(WV Code Chapter 19)</td>
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<td>Fund 1412 FY 2006 Org 1400</td>
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<td>1 Unclassified-Total ................... 096</td>
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<td>104-Department of Agriculture-</td>
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<td>46</td>
<td>Donated Food Fund</td>
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<td>47</td>
<td>(WV Code Chapter 19)</td>
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<td>Fund 1446 FY 2006 Org 1400</td>
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<td>1 Unclassified-Total ................... 096</td>
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<td>105-Attorney General-</td>
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<td>51</td>
<td>Antitrust Enforcement</td>
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<td>52</td>
<td>(WV Code Chapter 47)</td>
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<td>53</td>
<td>Fund 1507 FY 2006 Org 1500</td>
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</table>
2332  

**APPROPRIATIONS**  [Ch. 1

54 1 Personal Services .................. 001  $ 2,718
55 3 Employee Benefits ................. 010  494

56

*106-Attorney General*

57  

_Preneed Funeral Regulation Fund_

58

(WV Code Chapter 47)

59  

 Fund 1513 FY 2006 Org 1500

60 1 Unclassified-Total ................. 096  $ 3,839

61

*108-Secretary of State*

62  

_Service Fees and Collection Account_

63

(WV Code Chapters 3, 5, and 59)

64  

 Fund 1612 FY 2006 Org 1600

65 1 Personal Services .................. 001  $ 26,100
66 3 Employee Benefits ................. 010  4,738

67

**DEPARTMENT OF ADMINISTRATION**

68

*110-Office of the Secretary*

69  

_Tobacco Settlement Fund_

70

(WV Code Chapter 4)

71  

 Fund 2041 FY 2006 Org 0201

72 1 Tobacco Settlement Fund-Transfer .. 902  $ 529,336

73

*111-Division of Information Services and Communications*

74

(WV Code Chapter 5A)

75  

 Fund 2220 FY 2006 Org 0210
Ch. 1] APPROPRIATIONS 2333

76 1 Personal Services ................. 001 $ 202,491
77 3 Employee Benefits ............... 010 36,753

78 112-Division of Personnel
79 (WV Code Chapter 29)
80 Fund 2440 FY 2006 Org 0222
81 1 Personal Services ................. 001 $ 58,320
82 3 Employee Benefits ............... 010 10,586

83 113-WV Prosecuting Attorneys Institute
84 (WV Code Chapter 7)
85 Fund 2521 FY 2006 Org 0228
86 1 Unclassified-Total (R) .......... 096 $ 3,350

87 113a-Chief Technology Officer Administration Fund
88 (WV Code Chapter 5)
89 Fund 2531 FY 2006 Org 0231
90 1 Unclassified ...................... 099 $ 7,444

91 DEPARTMENT OF COMMERCE

92 114-Division of Forestry
93 (WV Code Chapter 19)
94 Fund 3081 FY 2006 Org 0305
95 1 Personal Services ............... 001 $ 6,075
96 3 Employee Benefits ............... 010 1,103
| 2334 | APPROPRIATIONS [Ch. 1 |
| 97 | 116-Division of Forestry-
| 98 | Severance Tax Operations |
| 99 | (WV Code Chapter 11) |
| 100 | Fund 3084 FY 2006 Org 0305 |
| 101 | 1 Unclassified-Total ............... 096 $ 36,154 |
| 102 | 117-Geological and Economic Survey |
| 103 | (WV Code Chapter 29) |
| 104 | Fund 3100 FY 2006 Org 0306 |
| 105 | 1 Personal Services ................. 001 $ 662 |
| 106 | 3 Employee Benefits ............... 010 121 |
| 107 | 119-West Virginia Development Office-
| 108 | Office of Coal Field Community Development |
| 109 | (WV Code Chapter 5B) |
| 110 | Fund 3162 FY 2006 Org 0307 |
| 111 | 1 Unclassified-Total (R) ............ 096 $ 4,254 |
| 112 | 120-Division of Labor-
<p>| 113 | Contractor Licensing Board Fund |
| 114 | (WV Code Chapter 21) |
| 115 | Fund 3187 FY 2006 Org 0308 |
| 116 | 1 Personal Services ................. 001 $ 24,188 |
| 117 | 3 Employee Benefits ............... 010 4,391 |</p>
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<tr>
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<th>Elevator Safety Act</th>
<th>(WV Code Chapter 21)</th>
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<td>123</td>
<td>3 Employee Benefits ................. 010</td>
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<td>122-Division of Labor-</td>
<td>Crane Operator Certification Fund</td>
<td>(WV Code Chapter 21)</td>
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<td>Amusement Rides and Amusement Attraction Safety Fund</td>
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<td>124-Division of Natural Resources</td>
<td>(WV Code Chapter 20)</td>
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<td>Fund 3200 FY 2006 Org 0310</td>
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126-Division of Natural Resources-
Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2006 Org 0310

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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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128-Division of Natural Resources-
Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2006 Org 0310

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APPROPRIATIONS

131-Miners' Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2006 Org 0314

1 Personal Services .......................... 001 $ 3,150
3 Employee Benefits ....................... 010 572

DEPARTMENT OF EDUCATION

132-State Board of Education-
Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2006 Org 0402

1 Unclassified-Total (R) ................. 096 $ 4,971

133-State Department of Education-
School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2006 Org 0402

1 Personal Services .......................... 001 $ 9,000
3 Employee Benefits ....................... 010 1,634

134-State Department of Education-
FFA-FHA Camp and Conference Center

(WV Code Chapter 18)

Fund 3960 FY 2006 Org 0402
2338  APPROPRIATIONS  [Ch. 1

180  1  Personal Services .................. 001 $ 22,233
181  3  Employee Benefits ................. 010 5,036

182  DEPARTMENT OF EDUCATION AND THE ARTS

183  135-Office of the Secretary-

184  Lottery Education Fund Interest Earnings-

185  Control Account

186  (WV Code Chapter 29)

187  Fund 3508 FY 2006 Org 0431

188  1  EPSCoR—Total (R) ................. 651 $ 2,659

189  136-Division of Culture and History–

190  Public Records and Preservation Revenue Account

191  (WV Code Chapter 5A)

192  Fund 3542 FY 2006 Org 0432

193  1  Unclassified—Total ............... 096 $ 1,638

194  DEPARTMENT OF ENVIRONMENTAL PROTECTION

195  138-Solid Waste Management Board

196  (WV Code Chapter 22C)

197  Fund 3288 FY 2006 Org 0312

198  1  Personal Services .................. 001 $ 9,450
199  3  Employee Benefits ................. 010 1,716
Ch. 1] APPROPRIATIONS 2339

139-Division of Environmental Protection-

The Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2006 Org 0313

1 Personal Services .................... 001 $ 1,800
3 Employee Benefits .................... 010 327

140-Division of Environmental Protection-

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2006 Org 0313

1 Unclassified—Total .................... 096 $ 4,786

141-Division of Environmental Protection-

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2006 Org 0313

1 Personal Services .................... 001 $ 10,800
3 Employee Benefits .................... 010 1,961

142-Division of Environmental Protection-

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2006 Org 0313

1 Unclassified-Total .................... 096 $ 1,064
143-Division of Environmental Protection
Oil and Gas Operating Permit and Processing Fund
(WV Code Chapter 22)

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| 1 | Personal Services | 001 | $7,785 |
| 3 | Employee Benefits | 010 | 1,413 |

144-Division of Environmental Protection
Mining and Reclamation Operations Fund
(WV Code Chapter 22)

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| 1 | Personal Services | 001 | $74,997 |
| 3 | Employee Benefits | 010 | 13,612 |

145-Division of Environmental Protection
The Underground Storage Tank Administrative Fund
(WV Code Chapter 22)

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<td>3325</td>
<td>2006</td>
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| 1 | Personal Services | 001 | $5,400 |
| 3 | Employee Benefits | 010 | 981 |

146-Division of Environmental Protection
The Hazardous Waste Emergency Response Fund
244  (WV Code Chapter 22)

245  Fund 3331 FY 2006 Org 0313

246  1  Personal Services ............... 001  $ 5,850
247  3  Employee Benefits .............. 010  1,062

147-Division of Environmental Protection-

249  Solid Waste Reclamation and

250  Environmental Response Fund

251  (WV Code Chapter 22)

252  Fund 3332 FY 2006 Org 0313

253  1  Personal Services ............... 001  $ 3,600
254  3  Employee Benefits .............. 010  654

148-Division of Environmental Protection-

256  Solid Waste Enforcement Fund

257  (WV Code Chapter 22)

258  Fund 3333 FY 2006 Org 0313

259  1  Personal Services ............... 001  $ 29,385
260  3  Employee Benefits .............. 010  5,334

149-Division of Environmental Protection-

262  Air Pollution Control Fund

263  (WV Code Chapter 22)

264  Fund 3336 FY 2006 Org 0313

265  1  Personal Services ............... 001  $ 71,910
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<td>Fund 3340 FY 2006 Org 0313</td>
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<td>Special Oil and Gas Conservation Fund</td>
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DEPARTMENT OF HEALTH AND HUMAN RESOURCES

154-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

Fund 5425 FY 2006 Org 0505

1 Personal Services .................. 001 $ 8,100
3 Employee Benefits ............... 010 1,471

155-WV Board of Medicine

(WV Code Chapter 30)

Fund 5106 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $ 12,229

156-Division of Health-

Tobacco Settlement Expenditure Fund

(WV Code Chapter 4)

Fund 5124 FY 2006 Org 0506

3 Institutional Facilities
4 Operations (R) .................... 335 $ 518,543
5 Tobacco Education Program (R) .... 906 10,793
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Ch. 1]  

APPROPRIATIONS  

(WV Code Chapter 16)  

Fund 5172 FY 2006 Org 0506  

1 Personal Services ................ 001 $ 3,600  
3 Employee Benefits ................ 010 654  

161-Division of Health- 

Hepatitis B Vaccine  

(WV Code Chapter 16)  

Fund 5183 FY 2006 Org 0506  

1 Personal Services ................ 001 $ 1,800  
3 Employee Benefits ................ 010 327  

163-Division of Health- 

West Virginia Birth to Three Fund  

(WV Code Chapter 16)  

Fund 5214 FY 2006 Org 0506  

1 Personal Services ................ 001 $ 12,150  
3 Employee Benefits ................ 010 2,206  

165-West Virginia Health Care Authority— 

Health Care Cost Review Fund  

(WV Code Chapter 16)  

Fund 5375 FY 2006 Org 0507  

1 Personal Services ................ 001 $ 34,200  
3 Employee Benefits ................ 010 6,208
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### DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

#### 173-West Virginia Division of Corrections -

**Parolee Supervision Fees**

(WV Code Chapter 62)

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#### 174-West Virginia State Police -

**Motor Vehicle Inspection Fund**

(WV Code Chapter 17C)

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#### 178-West Virginia State Police -

**Central Abuse Registry Fund**

(WV Code Chapter 15)

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| 1 Unclassified | 099 | $5,317 |

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

(WV Code Chapter 31)

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<td>183-Fire Commission-</td>
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<td>Fire Marshal Fees</td>
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<td>184-Division of Criminal Justice Services-</td>
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<td><strong>186-Division of Banking</strong></td>
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<td>(WV Code Chapter 31A)</td>
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<td>188-Tax Division-</td>
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<td>Special Audit and Investigative Unit</td>
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Ch. 1] APPROPRIATIONS 2349

(WV Code Chapter 11)

Fund 7073 FY 2006 Org 0702

1 Personal Services .......................... 001 $ 27,450
3 Employee Benefits ...................... 010 4,983

190-Insurance Commissioner-
Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2006 Org 0704

1 Personal Services .......................... 001 $ 4,950
3 Employee Benefits ...................... 010 899

191-Insurance Commissioner-
Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2006 Org 0704

1 Personal Services .......................... 001 $ 4,500
3 Employee Benefits ...................... 010 817

192-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2006 Org 0704

1 Personal Services (R) ................. 001 $ 104,850
3 Employee Benefits (R) ............... 010 19,031
| 2350 APPROPRIATIONS |  | [Ch. 1
438 | 199-Municipal Bond Commission | (WV Code Chapter 13)
439 | Fund 7253 FY 2006 Org 0706
440 | 1 Personal Services ................. 001 | $3,600
441 | 3 Employee Benefits ................. 010 | 654
442 | 201-Racing Commission-
443 | Administration and Promotion | (WV Code Chapter 19)
444 | Fund 7304 FY 2006 Org 0707
445 | 1 Personal Services ................. 001 | $1,800
446 | 3 Employee Benefits ................. 010 | 327
447 | 202-Racing Commission-
448 | General Administration | (WV Code Chapter 19)
449 | Fund 7305 FY 2006 Org 0707
450 | 1 Personal Services ................. 001 | $28,800
451 | 3 Employee Benefits ................. 010 | 5,228
452 | 204-Alcohol Beverage Control Administration-
453 | Wine License Special Fund | (WV Code Chapter 60)
454 | Fund 7351 FY 2006 Org 0708
455 | 1 Personal Services ................. 001 | $6,750
456 | 3 Employee Benefits ................. 010 | 1,226
457 |  |  |  |
205-Alcohol Beverage Control Administration (WV Code Chapter 60)

Fund 7352 FY 2006 Org 0708

1 Personal Services .................. 001 $ 99,450
3 Employee Benefits ................. 010 18,051

DEPARTMENT OF TRANSPORTATION

206-Division of Motor Vehicles-

Driver’s License Reinstatement Fund (WV Code Chapter 17B)

Fund 8213 FY 2006 Org 0802

1 Personal Services .................. 001 $ 16,650
3 Employee Benefits ................. 010 3,022

207-Division of Motor Vehicles-

Driver Rehabilitation (WV Code Chapter 17C)

Fund 8214 FY 2006 Org 0802

1 Unclassified-Total ................. 096 $ 4,254

208-Division of Motor Vehicles-

Insurance Certificate Fees (WV Code Chapter 20)

Fund 8215 FY 2006 Org 0802
2352  APPROPRIATIONS  [Ch. 1

482 1  Personal Services . . . . . . . . 001  $ 21,150
483 3  Employee Benefits . . . . . . . 010  3,839

209-Division of Motor Vehicles-

Motorboat Licenses

(WV Code Chapter 20)

Fund 8216 FY 2006 Org 0802

488 1  Unclassified-Total . . . . . . . . 096  $ 9,039

HIGHER EDUCATION POLICY COMMISSION

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

497 3  Facilities Planning
498 4  and Administration (R) . . . . 386  $ 5,881

217-Health Sciences-

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2006 Org 0463

503 1  Unclassified-Total (R) . . . . . . . . 096  $ 120,308
MISCELLANEOUS BOARDS AND COMMISSIONS

222-Hospital Finance Authority
(WV Code Chapter 16)
Fund 5475 FY 2006 Org 0509

1 Personal Services ................. 001 $ 900
3 Employee Benefits ............... 010 164

223-WV State Board of Examiners for Licensed Practical Nurses
(WV Code Chapter 30)
Fund 8517 FY 2006 Org 0906

1 Unclassified-Total .............. 096 $ 4,254

224-WV Board of Examiners for Registered Professional Nurses
(WV Code Chapter 30)
Fund 8520 FY 2006 Org 0907

1 Unclassified-Total .............. 096 $ 9,571

225-Public Service Commission
(WV Code Chapter 24)
Fund 8623 FY 2006 Org 0926

1 Personal Services ............... 001 $ 146,673
3 Employee Benefits ............... 010 26,622
5 Weight Enforcement Program ...... 345 67,530
2354 APPROPRIATIONS

526 226-Public Service Commission-

527 Gas Pipeline Division—

528 Public Service Commission Pipeline Safety Fund

529 (WV Code Chapter 24B)

530 Fund 8624 FY 2006 Org 0926

531 1 Personal Services ................. 001 $ 3,141
532 3 Employee Benefits ............... 010 571

533 227-Public Service Commission-

534 Motor Carrier Division

535 (WV Code Chapter 24A)

536 Fund 8625 FY 2006 Org 0926

537 1 Personal Services ................. 001 $ 31,613
538 3 Employee Benefits ............... 010 5,738

539 228-Public Service Commission-

540 Consumer Advocate

541 (WV Code Chapter 24)

542 Fund 8627 FY 2006 Org 0926

543 1 Personal Services ................. 001 $ 6,300
544 3 Employee Benefits ............... 010 1,144

545 229-Real Estate Commission

546 (WV Code Chapter 30)

547 Fund 8635 FY 2006 Org 0927
Ch. 1] APPROPRIATIONS 2355

548 1 Personal Services ................. 001 $ 4,320
549 3 Employee Benefits ................. 010 785

550 230-WV Board of Examiners for Speech-Language Pathology and Audiology
551 (WV Code Chapter 30)
552 Fund 8646 FY 2006 Org 0930
553 1 Unclassified-Total ................. 096 $ 1,064

554 231-WV Board of Respiratory Care
555 (WV Code Chapter 30)
556 Fund 8676 FY 2006 Org 0935
557 1 Unclassified-Total ................. 096 $ 1,064

558 233-Massage Therapy Licensure Board
559 (WV Code Chapter 30)
560 Fund 8671 FY 2006 Org 0938
561 1 Unclassified-Total ................. 096 $ 1,861

Sec. 6. Appropriations of federal funds.

EXECUTIVE

3 262-Governor’s Office-
4 Office of Economic Opportunity
5 (WV Code Chapter 5)
6 Fund 8797 FY 2006 Org 0100
<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
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<tbody>
<tr>
<td>263-Governor’s Office-</td>
<td>$8,507</td>
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<tr>
<td>Commission for National and Community Service</td>
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<td>Fund 8800 FY 2006 Org 0100</td>
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<tr>
<td>264-Auditor’s Office-</td>
<td>$7,976</td>
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<tr>
<td>National White Collar Crime Center</td>
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<tr>
<td>Fund 8807 FY 2006 Org 1200</td>
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<tr>
<td>265-Department of Agriculture</td>
<td>$1,425</td>
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<tr>
<td>Fund 8736 FY 2006 Org 1400</td>
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<tr>
<td>266-Department of Agriculture-</td>
<td>$15,908</td>
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<tr>
<td>Meat Inspection</td>
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<tr>
<td>Fund 8737 FY 2006 Org 1400</td>
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<tr>
<td>28  Unclassified-Total 096</td>
<td>$20,736</td>
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</tbody>
</table>
APPROPRIATIONS

268-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2006 Org 1600

1 Unclassified-Total .................. 096 $ 1,808

DEPARTMENT OF ADMINISTRATION

269-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2006 Org 0228

1 Unclassified-Total .................. 096 $ 203

270-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2006 Org 0230

1 Unclassified-Total .................. 096 $ 7,550

DEPARTMENT OF COMMERCE

271-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2006 Org 0305

1 Unclassified-Total .................. 096 $ 9,571

272-Geological and Economic Survey

(WV Code Chapter 29)
APPROPRIATIONS

50 Fund 8704 FY 2006 Org 0306
51 1 Unclassified-Total ................. 096 $ 2,202

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

52 Fund 8705 FY 2006 Org 0307
55 1 Unclassified-Total ................. 096 $ 40,865

274-Division of Labor
(WV Code Chapters 21 and 47)

56 Fund 8706 FY 2006 Org 0308
59 1 Unclassified-Total ................. 096 $ 7,853

275-Division of Natural Resources
(WV Code Chapter 20)

57 Fund 8707 FY 2006 Org 0310
63 1 Unclassified-Total ................. 096 $ 78,954

276-Division of Miners' Health,
Safety and Training
(WV Code Chapter 22)

59 Fund 8709 FY 2006 Org 0314
68 1 Unclassified-Total ................. 096 $ 14,887
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<th></th>
<th>Appropriations</th>
<th>2359</th>
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<td></td>
<td><strong>DEPARTMENT OF EDUCATION</strong></td>
<td></td>
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<tr>
<td>69</td>
<td>277-<strong>State Department of Education</strong></td>
<td></td>
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<tr>
<td>70</td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td>71</td>
<td>Fund 8712 FY 2006 Org 0402</td>
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<td>72</td>
<td>1 Unclassified-Total ............... 096</td>
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<td>278-<strong>State Department of Education-</strong></td>
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<td>74</td>
<td><em>School Lunch Program</em></td>
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<td>75</td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td>76</td>
<td>Fund 8713 FY 2006 Org 0402</td>
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<td>77</td>
<td>1 Unclassified-Total ............... 096</td>
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<td>279-<strong>State Board of Education-</strong></td>
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<td>79</td>
<td><em>Vocational Division</em></td>
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<td>80</td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td>81</td>
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<td>82</td>
<td>1 Unclassified-Total ............... 096</td>
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<td>280-<strong>State Department of Education-</strong></td>
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<tr>
<td>84</td>
<td><em>Aid for Exceptional Children</em></td>
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</tr>
<tr>
<td>85</td>
<td>(WV Code Chapters 18 and 18A)</td>
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<td>86</td>
<td>Fund 8715 FY 2006 Org 0402</td>
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<td>87</td>
<td>1 Unclassified-Total ............... 096</td>
<td>$ 55,666</td>
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</table>
DEPARTMENT OF EDUCATION AND THE ARTS

283-Division of Culture and History
(WV Code Chapter 29)
Fund 8718 FY 2006 Org 0432

1 Unclassified-Total ................. 096 $ 11,517

284-Library Commission
(WV Code Chapter 10)
Fund 8720 FY 2006 Org 0433

1 Unclassified-Total ................. 096 $ 6,381

286-State Board of Rehabilitation-
Division of Rehabilitation Services
(WV Code Chapter 18)
Fund 8734 FY 2006 Org 0932

1 Unclassified-Total ................. 096 $ 661,002

DEPARTMENT OF ENVIRONMENTAL PROTECTION

287-Division of Environmental Protection
(WV Code Chapter 22)
Fund 8708 FY 2006 Org 0313

1 Unclassified-Total ................. 096 $ 347,227
<table>
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<th>Ch. 1]</th>
<th>APPROPRIATIONS</th>
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<tr>
<td>109</td>
<td><strong>DEPARTMENT OF HEALTH AND HUMAN RESOURCES</strong></td>
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<td>110</td>
<td><strong>288-Consolidated Medical Service Fund</strong></td>
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<td>111</td>
<td><em>(WV Code Chapter 16)</em></td>
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<td>112</td>
<td>Fund 8723 FY 2006 Org 0506</td>
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<td>113</td>
<td>1 Unclassified-Total ............... 096 $ 5,317</td>
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<td>114</td>
<td><strong>289-Division of Health-Central Office</strong></td>
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<td>115</td>
<td><em>(WV Code Chapter 16)</em></td>
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<td>116</td>
<td>Fund 8802 FY 2006 Org 0506</td>
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<td>117</td>
<td>1 Unclassified-Total ............... 096 $ 248,309</td>
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<td>118</td>
<td><strong>292-Human Rights Commission</strong></td>
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<td>119</td>
<td><em>(WV Code Chapter 5)</em></td>
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<td>120</td>
<td>Fund 8725 FY 2006 Org 0510</td>
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<td>121</td>
<td>1 Unclassified-Total ............... 096 $ 9,571</td>
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<td>122</td>
<td><strong>293-Division of Human Services</strong></td>
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<td>123</td>
<td><em>(WV Code Chapters 9, 48 and 49)</em></td>
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<td>124</td>
<td>Fund 8722 FY 2006 Org 0511</td>
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<td>125</td>
<td>1 Unclassified-Total ............... 096 $ 1,396,248</td>
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<td>126</td>
<td><strong>DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY</strong></td>
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<tr>
<td>127</td>
<td><strong>295-Adjutant General-State Militia</strong></td>
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</table>
2362 APPROPRIATIONS [Ch. 1
131 (WV Code Chapter 15)
132 Fund 8726 FY 2006 Org 0603
133 1 Unclassified-Total .................. 096 $ 233,672
134 296-Office of Emergency Services
135 (WV Code Chapter 15)
136 Fund 8727 FY 2006 Org 0606
137 1 Unclassified-Total .................. 096 $ 34,772
138 298-West Virginia State Police
139 (WV Code Chapter 15)
140 Fund 8741 FY 2006 Org 0612
141 1 Unclassified-Total .................. 096 $ 6,912
142 300-Division of Veterans’ Affairs-
143 Veterans’ Home
144 (WV Code Chapter 9A)
145 Fund 8728 FY 2006 Org 0618
146 1 Unclassified-Total .................. 096 $ 12,761
147 301-Division of Criminal Justice Services
148 (WV Code Chapter 15)
149 Fund 8803 FY 2006 Org 0620
150 1 Unclassified-Total .................. 096 $ 23,261
### 302-Division of Juvenile Services

(WV Code Chapter 49)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
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<tr>
<td>8855</td>
<td>2006</td>
<td>0621</td>
<td>096</td>
<td>$7,976</td>
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### DEPARTMENT OF TRANSPORTATION

#### 305-Division of Motor Vehicles

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
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<td>2006</td>
<td>0802</td>
<td>096</td>
<td>$5,849</td>
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#### 306-Division of Public Transit

(WV Code Chapter 17)

<table>
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<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
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<td>8745</td>
<td>2006</td>
<td>0805</td>
<td>096</td>
<td>$7,444</td>
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### BUREAU OF SENIOR SERVICES

#### 310-Bureau of Senior Services

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
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<td>8724</td>
<td>2006</td>
<td>0508</td>
<td>096</td>
<td>$12,936</td>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

#### 312-Public Service Commission-
Motor Carrier Division
(WV Code Chapter 24A)
Fund 8743 FY 2006 Org 0926
1 Unclassified-Total .................. 096 $ 23,527

313-Public Service Commission-
Gas Pipeline Division
(WV Code Chapter 24B)
Fund 8744 FY 2006 Org 0926
1 Unclassified-Total .................. 096 $ 4,786

Sec. 7. Appropriations from federal block grants.

317-Governor's Office-
Office of Economic Opportunity
Community Services
Fund 8799 FY 2006 Org 0100
1 Unclassified-Total .................. 096 $ 7,444

318-West Virginia Development Office-
Community Development
Fund 8746 FY 2006 Org 0307
1 Unclassified-Total .................. 096 $ 9,464

319a-Governor's Workforce Investment Office-
Workforce Investment Act
Ch. 1] 

APPROPRIATIONS

2365

13 Fund 8888 FY 2006 Org 0331

14 1 Unclassified-Total ............... 096 $ 33,496

15 320-Division of Health-

Maternal and Child Health

17 Fund 8750 FY 2006 Org 0506

18 1 Unclassified-Total ............... 096 $ 41,471

19 321-Division of Health-

Preventive Health

21 Fund 8753 FY 2006 Org 0506

22 1 Unclassified-Total ............... 096 $ 2,553

23 322-Division of Health-

Substance Abuse Prevention and Treatment

25 Fund 8793 FY 2006 Org 0506

26 1 Unclassified-Total ............... 096 $ 11,697

27 323-Division of Health-

Community Mental Health Services

29 Fund 8794 FY 2006 Org 0506

30 1 Unclassified-Total ............... 096 $ 13,292

31 324-Division of Health-

Abstinence Education Program

33 Fund 8825 FY 2006 Org 0506

34 1 Unclassified-Total ............... 096 $ 1,064
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<tr>
<th>Division</th>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Unclassified-Total</th>
<th>Amount</th>
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<td>326-Division of Human Services-Social Services</td>
<td>8757</td>
<td>2006</td>
<td>0511</td>
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<td>$340,326</td>
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<tr>
<td>327-Division of Human Services-Temporary Assistance Needy Families</td>
<td>8816</td>
<td>2006</td>
<td>0511</td>
<td>096</td>
<td>$313,343</td>
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<td>328-Division of Human Services-Child Care and Development</td>
<td>8817</td>
<td>2006</td>
<td>0511</td>
<td>096</td>
<td>$23,926</td>
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<tr>
<td>329-Division of Criminal Justice Services-Juvenile Accountability Incentive</td>
<td>8829</td>
<td>2006</td>
<td>0620</td>
<td>096</td>
<td>$1,936</td>
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<tr>
<td>330-Division of Criminal Justice Services-Local Law Enforcement</td>
<td>8833</td>
<td>2006</td>
<td>0620</td>
<td>096</td>
<td>$288</td>
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</table>
The purpose of this supplementary appropriation bill is to appropriate public money, as specified (general revenue fund, state road fund, other funds, and federal funds) with insertion of such moneys into funds amending chapter sixteen, acts of the legislature, regular session two thousand five, as amended, known as the budget bill, and specified items thereof, and with all necessary adjustments of increase, in such specified funds and new appropriations provided for by this legislation. These public moneys, as newly provided for, shall be available for such use and expenditure upon passage of the bill and in fiscal year two thousand six, supplementing the budget bill for such fiscal year earlier enacted.

CHAPTER 2

(Com. Sub. for H. B. 417 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed September 13, 2005; in effect from passage.] [Approved by the Governor on September 19, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the Joint Expenses, fund 0175, fiscal year 2006, organization 2300, to the Supreme Court, fund 0180, fiscal year 2006, organization 2400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2006, organization 1400, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2006, organization 0307, to the Department of Education - State Department of Education, fund 0313, fiscal year 2006, organization 0402, to the Department of Health and Human
Resources – Office of the Secretary, fund 0400, fiscal year 2006, organization 0501, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2006, organization 0613, and to the West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2006, organization 0420, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s statement of the state fund - general revenue there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to fund 0175, fiscal year 2006, organization 2300, be supplemented and amended by adding thereto a new item of appropriation to read as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 LEGISLATIVE
3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2006 Org 2300

Any unexpended balance remaining in the appropriation for Supplement for PERS and TERS 2006 - Surplus (fund 0175, activity) at the close of the fiscal year 2006 is hereby reappropriated for expenditure during the fiscal year 2007.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0180, fiscal year 2006, organization 2400, be supplemented and amended by adding thereto a new item of appropriation to read as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

JUDICIAL

4—Supreme Court-

General Judicial

Fund 0180 FY 2006 Org 2400

6a Magistrates’ Computer System - $1,500,000

6b Surplus $1,500,000
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0132, fiscal year 2006, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**EXECUTIVE**

**11—West Virginia Conservation Agency**

(WV Code Chapter 19)

Fund 0132 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Soil Conservation Projects</td>
<td>269 $ 3,750,000</td>
</tr>
</tbody>
</table>

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0256, fiscal year 2006, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF COMMERCE**

**33—West Virginia Development Office**
Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

41—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2006 Org 0402

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0400, fiscal year 2006, organization 0501, be supplemented and amended by adding thereto a new item of appropriation to read as follows:
TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

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

General

Activity Revenue Fund

1a Rural Health Care Providers
1b Revolving Loan Fund – Surplus. 674 $ 1,000,000

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0403, fiscal year 2006, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2006 Org 0511
And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0456, fiscal year 2006, organization 0613, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

69—Division of Veterans’ Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2006 Org 0613

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0596, fiscal
year 2006, organization 0420, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II — APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION

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

Control Account

(File Code Chapter 18B)

Fund 0596 FY 2006 Org 0420

General Activity Revenue Fund

West Virginia Northern Community and Technical College - Surplus . . . . 671 $ 149,000

The purpose of this supplemental appropriation bill is to supplement, amend and increase appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand six.
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand six, in the amount of three million dollars from the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, in the amount of five million dollars from the tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year 2003, organization 2300, in the amount of thirteen million dollars from the special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, in the amount of four million dollars from the joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, and in the amount of three million dollars from the joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand six, to the department of administration - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205.

WHEREAS, The Legislature finds that the account balance in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year
2003, organization 2300, special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, and joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2006, organization 2300, be decreased by expiring the amount of three million dollars, in the tax reduction and federal funding increased compliance lottery fund, fund 1735, fiscal year 2003, organization 2300, be decreased by expiring the amount of five million dollars, in the special income tax refund reserve fund, fund 1313, fiscal year 2006, organization 1300, be decreased by expiring the amount of thirteen million dollars, in the joint expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, be decreased by expiring the amount of four million dollars, and the joint expenses, fund 0175, fiscal year 2004, organization 2300, activity 642, be decreased by expiring the amount of three million dollars, to the unappropriated surplus balance of the state fund, general revenue.

And that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS.
2 Section 1. Appropriations from general revenue.
Ch. 3] APPROPRIATIONS 2377

DEPARTMENT OF ADMINISTRATION

18—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified -</td>
<td>$28,000,000</td>
</tr>
<tr>
<td>Total - Transfer</td>
<td>402</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer (fund 0195, activity 402) shall be transferred to the West Virginia Department of Public Safety Death, Disability and Retirement Fund (Fund 2160).

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.

The purpose of this supplementary appropriation bill is to expire funds into the unappropriated surplus balance in the state fund, general revenue, and to supplement and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand six.
AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year 2006 less net appropriation balances forwarded and regular appropriations for fiscal year 2006; and

WHEREAS, The Governor, by executive message dated the twelfth day of September, two thousand five, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand six; and

WHEREAS, It appears from the Governor’s statement of the state fund - general revenue and the executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to fund 0195, fiscal year 2006, organization 0205, be supplemented and amended by increasing an existing item of appropriation as follows:

1 TITLE II — APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

18—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total - Transfer</td>
<td>402 $ 30,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified - Total - Transfer (fund 0195, activity 402) shall be transferred to the West Virginia Department of Public Safety Death, Disability and Retirement Fund (Fund 2160).

The purpose of this supplementary appropriation bill is to supplement, amend, add and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, to the Lottery Commission - Excess Lottery Revenue Fund Surplus, fund 7208, fiscal year 2006, organization 0705, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature a statement of the State Excess Lottery Revenue Fund, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenue for the fiscal year two thousand six, less regular appropriations for the fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s statement of the State Excess Lottery Revenue Fund 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 six; 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 six, to fund 7208, fiscal year 2006, organization 0705, be supplemented and amended to read as follows:

1 Title II—appropriations.

Sec. 5. Appropriations from State Excess Lottery Revenue Fund.

253—Lottery Commission—

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2006 Org 0705

1 Unclassified - Total - Transfer .... 402 $ 12,900,000
2 Unclassified - Transfer ........... 482 34,930,942

The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund only after all funding required by section eighteen-a, article twenty-two, chapter twenty-nine of the code has been satisfied as determined by the Director of the Lottery.

From the above appropriation for Unclassified - Transfer, fund 7208 (activity 482), eleven million dollars shall be transferred to the Consolidated Public Retirement Board - West Virginia Department of Public Safety Death, Disability and Retirement Fund (Fund 2160) and twenty-three million nine hundred thirty thousand nine hundred forty-two dollars shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (Fund 2601) only after all other funding required, including that in the paragraph above, has been satisfied as determined by the Director of the Lottery.

The purpose of this supplementary appropriation bill is to add a new item of appropriation in the aforesaid account for the
designated spending unit for expenditure during the fiscal year two thousand six.

CHAPTER 6

(S. B. 4015 — By Senators Helmick, Sharpe, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed September 12, 2005; in effect from passage.]
[Approved by the Governor on September 19, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriation from the Department of Agriculture, Agriculture Fees Fund, fund 1401, fiscal year 2006, organization 1400, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 1401, fiscal year 2006, organization 1400, be amended and decreased in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 EXECUTIVE

4 100—Department of Agriculture—

Agriculture Fees Fund
And that the items of the total appropriation for the fiscal year ending the thirtieth day of June, two thousand six, to fund 1401, fiscal year 2006, organization 1400, be amended and increased in the existing line item as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

100—Department of Agriculture—

Agriculture Fees Fund

Fund 1401 FY 2006 Org 1400

The purpose of this supplementary appropriation bill is to supplement, amend, decrease 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 six, with no additional funds being appropriated.
AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to a new item of appropriation designated to the Department of Agriculture - West Virginia Agricultural Land Protection Authority, fund 0607, fiscal year 2006, organization 1400, by supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill.

WHEREAS, The Governor submitted to the Legislature a statement of the State Fund, General Revenue, dated the seventh day of September, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's statement of the State Fund - General Revenue there now remains an unappropriated surplus balance which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

Be it enacted by the Legislature of West Virginia:
That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, Section One thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

EXECUTIVE

13a—Department of Agriculture—

West Virginia Agricultural Land Protection Authority

Fund 0607 FY 2006 Org 1400

1 Unclassified - Total - Surplus . . . . . . . 284 $ 50,000

The purpose of this supplementary appropriation bill is to supplement this account in the Budget Act for the fiscal year ending the thirtieth day of June, two thousand six, by providing for a new item of appropriation to be established therein for the designated spending unit for expenditure during the fiscal year two thousand six.

CHAPTER 8

(S. B. 4017 — By Senators Helmick, Sharpe, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed September 12, 2005; in effect from passage.]
[Approved by the Governor on September 19, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Fund, General Revenue,
to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511 and Higher Education - Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2006, organization 0442, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Fund, General Revenue, to the Department of Health and Human Resources - Division of Human Services, fund 0403, fiscal year 2006, organization 0511, be amended and decreased in the line item as follows:

1 TITLE II—APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2006 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services (R)</td>
<td>189</td>
</tr>
</tbody>
</table>

And that the items of the total appropriation from the State Fund, General Revenue, to Higher Education - Higher Education Policy Commission - System - Control Account, fund
0586, fiscal year 2006, organization 0442, be amended and increased in the line items as follows:

**TITLE II—APPROPRIATIONS.**

Section 1. Appropriations from General Revenue.

**HIGHER EDUCATION**

87—Higher Education Policy Commission—

System—

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2006 Org 0442

<table>
<thead>
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<th>Activity</th>
<th>General Revenue Fund</th>
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</thead>
<tbody>
<tr>
<td>4 WVU - School of Health Sciences</td>
<td>174 $ 4,599,834</td>
</tr>
<tr>
<td>5 WVU - School of Health Sciences -</td>
<td></td>
</tr>
<tr>
<td>6 Charleston Division</td>
<td>175 261,697</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, decrease and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand six with no new money being appropriated.
AN ACT to repeal §3-8-5c of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and to amend and reenact §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code, all relating to regulating elections; defining terms; requiring candidates and persons making electioneering communications to keep and make available for inspection records of campaign-related contributions and spending; requiring persons who engage in electioneering communications to file financial statements with Secretary of State; contents of statement and filing requirements; penalties for filing delinquent or incomplete financial statements; granting the Secretary of State legislative and emergency rule-making authority; clarifying that electioneering communications made in coordination with a candidate or political party are considered contributions to such candidate or political party; increasing penalty for violations of prohibitions on corporate contributions to candidates or for electioneering communications; requiring political organizations to register with the Secretary of State prior to soliciting or accepting contributions; prohibiting political organizations from accepting contributions in excess of one thousand dollars before the primary and general elections; making it unlawful to create more than one political organization with the intent to avoid or evade contribution limitations; and establishing an internal operating date.
Be it enacted by the Legislature of West Virginia:

That §3-8-5c of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto three new sections, designated §3-8-1a, §3-8-2b and §3-8-14; and that §3-8-2, §3-8-4, §3-8-5a, §3-8-7, §3-8-8 and §3-8-12 of said code be amended and reenacted, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.
§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.
§3-8-2b. Disclosure of electioneering communications.
§3-8-4. Treasurers and financial agents; written designation requirements.
§3-8-5a. Information required in financial statement.
§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.
§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.
§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.
§3-8-14. Effective date of certain criminal offenses.

§3-8-1a. Definitions.

1 As used in this article, the following terms have the following definitions:

2 (1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

3 (2) “Broadcast, cable, or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.
“Candidate” means an individual who:

(A) Has filed a certificate of announcement under section seven, article five, of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(Candidate’s committee” means a political committee established with the approval of or in cooperation with one pre-candidate or candidate to explore the possibilities of seeking a particular office and/or to support or aid his or her nomination or election to an office in one election cycle. If a candidate directs or influences the activities of more than one committee, those committees shall be considered one committee of the purpose of contribution limits.

“Clearly identified” means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference such as “the Governor”, “your Senator” or “the incumbent”, or through an unambiguous reference to his or her status as a candidate such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals”.

“Contribution” means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person,
made for the purpose of influencing the nomination, election or
defeat of a candidate. An offer or tender of a contribution is not
a contribution if expressly and unconditionally rejected or
returned. A contribution does not include volunteer personal
services provided without compensation.

(7) “Direct costs of purchasing, producing or disseminating
electioneering communications” means:

(A) Costs charged by a vendor, including, but not limited
to, studio rental time, compensation of staff and employees,
costs of video or audio recording media and talent, material and
printing costs and postage; or

(B) The cost of airtime on broadcast, cable or satellite radio
and television stations, the cost of disseminating printed
materials, establishing a telephone bank, studio time, use of
facilities and the charges for a broker to purchase airtime.

(8) “Disclosure date” means either of the following:

(A) The first date during any calendar year on which any
electioneering communication is disseminated after the person
paying for the communication has spent a total of five thousand
dollars or more for the direct costs of purchasing, producing or
disseminating electioneering communications; or

(B) Any other date during that calendar year after any
previous disclosure date on which the person has made addi-
tional expenditures totaling five thousand dollars or more for
the direct costs of purchasing, producing or disseminating
electioneering communications.

(9) “Election” means any primary, general or special
election conducted under the provisions of this code or under
the charter of any municipality at which the voters nominate or
elect candidates for public office. For purposes of this article,
each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term “nomination” as used in this article.

(10) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, leaflet, pamphlet, flyer or outdoor advertising or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for a statewide office or the Legislature;

(ii) Is publicly disseminated within:

(a) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(b) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) “Electioneering communication” does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(a) A bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility; and
(b) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) A communication that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to any provision of this article, other than section two-b of this article, or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: Provided, That, independent expenditures required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for
sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter’s guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(11) “Financial agent” means any person acting for and by himself or herself, or any two or more natural persons acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(12) “Fund-raising event” means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(13) “Independent expenditure” means an expenditure made by a person other than a candidate or a candidate’s committee in support of or opposition to the nomination or election of one or more clearly identified candidates and without consultation or coordination with or at the request or suggestion of the candidate whose nomination or election the expenditure supports or opposes or the candidate’s agent. Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a clearly identified political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.
(14) “Mass mailing” means a mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period.

(15) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its members and which uses a majority of its membership dues for purposes other than political purposes. “Membership organization” does not include organizations that grant membership upon receiving a contribution.

(16) “Name” means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(17) “Person” means an individual, partnership, committee, association, and any other organization or group of individuals.

(18) “Political action committee” means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

(19) “Political party” means a political party as defined by section eight, article one, chapter three of this code or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(20) “Political purposes” means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administra-
tion or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

(21) “Targeted to the relevant electorate” means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by ten thousand or more individuals in the state in the case of a candidacy for statewide office and five hundred or more individuals in the district in the case of a candidacy for the Legislature.

(22) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions or trained volunteers.

(23) “Two-year election cycle” means the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions 2 U.S.C. §434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candi-
dates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) In addition to any other reporting required by the provisions of this chapter, any person making an independent expenditure in the amount of one thousand dollars or more for any statewide, legislative or multicounty judicial candidate or in the amount of five hundred dollars or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the eleventh day but more than twelve hours before the day of any election shall report the expenditure, on a form prescribed by the Secretary of State, within twenty-four hours after the expenditure is made or debt is incurred for a communication, to the Secretary of State by hand-delivery, facsimile or other means to assure receipt by the Secretary of State within the twenty-four-hour period.

(c) Any independent expenditure must include a clear and conspicuous public notice which identifies the name of the person who paid for the expenditure and states that the communication is not authorized by the candidate or his or her committee.

(d) Any person who has spent a total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of six months following the filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in section seven of this article. Any person who willfully fails to comply with this section is
guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars, or confined in jail for not more than one year, or both fined and confined.

§3-8-2b. Disclosure of electioneering communications.

(a) Every person who has spent a total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall, within twenty-four hours of each disclosure date, file with the Secretary of State a statement which contains:

(1) The name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person making the expenditure and the name of the custodian of the books and accounts of the person making the expenditure;

(2) If the person making the expenditure is not an individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(3) The amount of each expenditure of more than one thousand dollars made for electioneering communications during the period covered by the statement and the name of the person to whom the expenditure was made;

(4) The elections to which the electioneering communications pertain and the names, if known, of the candidates referred to or to be referred to therein; and

(5) The names and addresses of any contributors who contributed a total of more than one thousand dollars between the first day of the preceding calendar year and the disclosure date and whose contributions were used to pay for electioneering communications.
(b) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (a) of this section, the statement shall also include:

(1) The month, day and year that the contributions of any single contributor exceeded two hundred fifty dollars;

(2) If the contributor is a political action committee, the name and address the political action committee registered with the State Election Commission;

(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual’s current employer, if any, or, if the individual is self-employed, the name and address of the individual’s business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(c)(1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;

(2) Any individual who makes contributions totaling two hundred fifty dollars or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.
(d) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate’s committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication: Provided, That if the electioneering communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(e) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the Internet.

(f) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(g) The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(h) If any person, including but not limited to, a political organization (as defined in section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate’s committee or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordi-
nated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate’s party.

§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political committee, or as financial agent for any candidate for nomination or election to any statewide office, to any office encompassing an election district larger than a county or to any legislative office or for any person supporting, aiding or opposing the nomination, election or defeat of any candidate for an office encompassing an election district larger than a county, unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a financial agent or treasurer and is received by the Secretary of State before midnight, Eastern Standard Time, of that day or if mailed, is postmarked before that hour: Provided, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, Eastern Standard Time, of that day or if mailed, is postmarked before that hour: Provided, That
a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a filing designating a treasurer for a state or county political executive committee may be made anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee’s account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a) and (b) of this section.

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a contribution and the amount of the contribution. If the total contributions of any one person amount to two hundred fifty dollars or more, the residence and mailing address of the contributor and, if the
16 contributor is an individual, his or her major business affiliation
17 and occupation shall also be reported. A contribution totaling
18 more than fifty dollars of currency of the United States or
19 currency of any foreign country by any one contributor is
20 prohibited and a violation of section five-d of this article. The
21 statement on which contributions are required to be reported by
22 this subdivision may not distinguish between contributions
23 made by individuals and contributions made by partnerships,
24 firms, associations committees, organizations or groups.

25 (4) The total amount of contributions received during the
26 period covered by the financial statement.

27 (5) The name, residence and mailing address of any
28 individual or the name and mailing address of each lending
29 institution making a loan or of the spouse cosigning a loan, as
30 appropriate, the amount of any loan received, the date and terms
31 of the loan, including the interest and repayment schedule, and
32 a copy of the loan agreement.

33 (6) The name, residence and mailing address of any
34 individual or the name and mailing address of each partnership,
35 firm, association, committee, organization or group having
36 previously made or cosigned a loan for which payment is made
37 or a balance is outstanding at the end of the period, together
38 with the amount of repayment on the loan made during the
39 period and the balance at the end of the period.

40 (7) The total outstanding balance of all loans at the end of
41 the period.

42 (8) The name, residence and mailing address of any
43 individual, or the name and mailing address of each partnership,
44 firm, association, committee, organization or group to whom
45 each expenditure was made or liability incurred, together with
46 the amount and purpose of each expenditure or liability
47 incurred and the date of each transaction.
(9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.
(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor’s identity.

(i) No person may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the State. Any anonymous contribution shall be recorded as such on the candidate’s financial statement, but may not be expended for election expenses. At the time of
(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.
Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party executive committee or a political action committee representing a political party in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party executive committee or a political action committee representing a political party may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party executive committee or a political action committee representing a political party using this alternative method of reporting shall report: (i) The name of the committee; (ii) the type of fund-raising activity undertaken; (iii) the location where the activity occurred; (iv) the date of the fund raiser; (v) the name of any individual who contributed more than fifty dollars worth of items to be sold; (vi) the name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia; (vii) the gross receipts of the fund raiser; and (viii) the date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars or imprisoned in jail for not more
than one year, or both, in the discretion of the court. Forty days after any primary or other election, the Secretary of State, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located or has its principal place of business.

(b) (1) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the Secretary of State of twenty-five dollars a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Forty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to the provisions of this section shall be payable to the State of West Virginia and is collectable in any manner authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.
(4) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to the provisions of this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with the provisions of chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by the provisions of this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by the provisions of this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of such statement.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) No officer of any corporation, or agent or person on behalf of such corporation, whether incorporated under the laws of this or any other state, or foreign country, may pay, give or lend, or authorize to be paid, given or lent, any money or other thing of value belonging to such corporation, to any candidate, financial agent, political committee or other person, for the payment of any primary or other election expenses whatever. No person may solicit or receive such payment, contribution or other thing from any corporation, officer or agent thereof, or other person acting on behalf of such corporation.
(b)(1) The provisions of this section shall not be deemed to prohibit:

(A) Direct communications, other than by newspapers of general circulation, radio, television or billboard advertising likely to reach the general public, by a corporation to its stockholders and executive or administrative personnel and their families on any subject;

(B) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executives or administrative personnel and their families; and

(C) The solicitation of contributions to a separate segregated fund to be utilized for political purposes by any corporate officer, agent or any person on behalf of a corporation. Any separate segregated fund shall be deemed to be a political action committee for the purpose of this article and subject to all reporting requirements thereof.

(2) It shall be unlawful:

(A) For a separate segregated fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisal or the threat of force, job discrimination or financial reprisal, or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) For any person soliciting a stockholder, executive or administrative personnel and members of their family for a contribution to such fund to fail to inform such person of the political purposes of the separate segregated fund at the time of such solicitation;

(C) For any person soliciting any other person for a contribution to a separate segregated fund to fail to inform the
other person at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) For a corporation or a separate segregated fund established by a corporation to solicit contributions to the fund from any person other than its stockholders and their families and its executive or administrative personnel and their families or to contribute any corporate funds;

(E) For a corporation or a separate segregated fund established by a corporation to receive contributions to the fund from any person other than its stockholders and their immediate families and its executive or administrative personnel and their immediate families;

(F) For a corporation to engage in job discrimination or to discriminate in job promotion or transfer because of an employee’s failure to make a contribution to a separate segregated fund;

(G) For a separate segregated fund to make any contribution, directly or indirectly, in excess of one thousand dollars in connection with any campaign for nomination or election to or on behalf of any elective office in the State or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) For a corporation to pay, give or lend, or authorize to be paid, given or lent, any moneys or other things of value belonging to the corporation to a separate segregated fund for any purpose. This provision shall not be deemed to prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as
provided in subsection (d) of this section: Provided, That any such corporation shall also permit any group of employees thereof represented by a bona fide political action committee to use the real property of the corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission as provided in subsection (d) of this section. No property, real or personal, facilities, equipment, materials or services of a corporation may be used for the purpose of influencing any voter or voters to vote for a particular candidate or in any particular manner or to influence the result of any election.

(3) For the purposes of this section, the term “executive or administrative personnel” means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional or supervisory responsibilities.

(c) Any person or corporation violating any provision of this section shall be guilty of a misdemeanor and, on conviction, shall be fined not more than ten thousand dollars. No corporation may reimburse any person the amount of any fine imposed pursuant to this section.

(d) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U.S.C. §441b.
(e) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(f) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(g) Any investigation either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(h) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction shall be fined not less than one thousand dollars, nor more than five thousand dollars, and shall be imprisoned in jail not less than six months nor more than one year.
§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

(a) No person may publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) No owner, publisher, editor or employee of a newspaper or other periodical may insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) No person may, in any room or building occupied for the discharge of official duties by any officer or employee of the State or a political subdivision of the State, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the State, or a political subdivision of the State. No officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the State, who may have charge or control of any building, office or room, occupied for any official purpose, may knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or
delivering or giving written solicitations for, or any notice of,
any political assessments to, any officer or employee of the
State, or a political subdivision of the State.

(d) Except as provided in section eight of this article, no
person entering into any contract with the State or its subdivi-
sions, or any department or agency of the State, either for
rendition of personal services or furnishing any material,
supplies or equipment or selling any land or building to the
State, or its subdivisions, or any department or agency of the
State, if payment for the performance of the contract or
payment for the material, supplies, equipment, land or building
is to be made, in whole or in part, from public funds may,
during the period of negotiation for or performance under the
contract or furnishing of materials, supplies, equipment, land or
buildings, directly or indirectly, make any contribution to any
political party, committee or candidate for public office or to
any person for political purposes or use; nor may any person or
firm solicit any contributions for any purpose during any
period.

(e) No person may, directly or indirectly, promise any
employment, position, work, compensation or other benefit
provided for, or made possible, in whole or in part, by Act of
the Legislature, to any person as consideration, favor or reward
for any political activity for the support of or opposition to any
candidate, or any political party in any election.

(f) No person may, directly or indirectly, make any contri-
bution in excess of the value of one thousand dollars in connec-
tion with any campaign for nomination or election to or on
behalf of any statewide office, in connection with any other
campaign for nomination or election to or on behalf of any
other elective office in the state or any of its subdivisions, or in
connection with or on behalf of any person engaged in further-
ing, advancing, supporting or aiding the nomination or election
of any candidate for any of the offices.
(g) No political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. During the two-year election cycle, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than one thousand dollars from any one person prior to the primary election and contributions totaling more than one thousand dollars from any one person after the primary and before the general election.

(h) It shall be unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, no person may, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of one thousand dollars in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party’s legislative caucus political committee from national committees of the same political party: Provided, That transfers permitted by this subsection may not exceed fifty thousand dollars in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: Provided, however, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.
(k) No person may solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: Provided, That in no event shall any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. No person may coerce or intimidate any nonelective salaried employee into making a contribution. No person may coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

(l) No person may solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(m) No person may place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term “roadside receptacle” means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.
(n) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in a regional or county jail for not more than one year, or, in the discretion of the court, be subject to both fine and confinement.

(o) The provisions of subsection (k) of this section, permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after the first day of January, two thousand five.

(p) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

§3-8-14. Effective date of certain criminal offenses.

The criminal offenses created in sections two, seven and twelve of this article by the provisions of Enrolled Committee Substitute for House Bill No. 402 during the fourth extraordinary session, two thousand five, shall be effective ninety days from passage.

CHAPTER 10

(S. B. 4002 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed September 9, 2005; in effect from passage.] [Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §11-8-16 of the Code of West Virginia, 1931, as amended, relating to levy elections; allowing
levy elections in conjunction with primary elections; and conforming the statute to meet constitutional requirements.

Be it enacted by the Legislature of West Virginia:

That §11-8-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

(1) The purpose for which additional funds are needed;
(2) The amount for each purpose;
(3) The total amount needed;
(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
(5) The proposed additional rate of levy in cents on each class of property;
(6) The proposed number of years, not to exceed five, to which the additional levy applies;
(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at
either a primary, general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: Provided, That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each one hundred dollars of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of section six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. 

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.
Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply.

CHAPTER 11

(H. B. 401 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 28, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-3a; and to amend and reenact §11-15B-2 and §11-15B-2a of said code, all relating generally to consumers sales and use taxes on food and food ingredients intended for human consumption; reducing rate of tax on sales, purchases and uses of food and food ingredients to five percent beginning on specified date; defining food and food ingredients and certain other terms; providing that lower rate does not apply to sales, purchases and uses of prepared food; authorizing legislative and emergency rules; and specifying internal effective dates.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-15-3a; and that §11-
15B-2 and §11-15B-2a of said code be amended and reenacted, all to read as follows:

Article 15. Consumers Sales and Service Tax.
15b. Streamlined Sales and Use Taxes.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3a. Rate of tax on food and food ingredients intended for human consumption; reduction of tax beginning January 1, 2006; exceptions; legislative, emergency and other rules.

(a) Rate of tax on food and food ingredients. — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on sales, purchases and uses of food and food ingredients intended for human consumption after the thirty-first day of December, two thousand five, shall be five percent of its sales price, as defined in section two, article fifteen-b of this chapter.

(b) Calculation of tax on fractional parts of a dollar. — The tax computation under this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The seller may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) Exceptions. — The reduced rate of tax provided in this section shall not apply to sales, purchases and uses by consumers of “Prepared food,” as defined in article fifteen-b of this chapter, which shall remain taxable at the general rate of tax specified in section three of this article and section two, article fifteen-a of this chapter.
(d) **Federal food stamp and women, infants and children programs, other exemptions.**— Nothing in this section shall affect application of the exemption from tax provided in section nine of this article for food purchased by an eligible person using food stamps, electronic benefits transfer cards or vouchers issued by or pursuant to authorization of the United States Department of Agriculture to individuals participating in the federal food stamp program, by whatever name called, or the women, infants, and children (WIC) program, or application of any other exemption from tax set forth in this article or article fifteen-a of this chapter.

(e) **Legislative rules; emergency rules.** — The Tax Commissioner may promulgate legislative rules and emergency rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code. The authority to promulgate rules includes authority to amend or repeal those rules. If proposed legislative rules for this section are filed in the State Register before the fifteenth day of December, two thousand five, those rules may be promulgated as emergency legislative rules, as provided in article three of said chapter twenty-nine-a.

**ARTICLE 15B. STREAMLINED SALES AND USE TAXES.**


§11-15B-2a. Streamlined sales and use tax agreement defined.


(a) **General.** — When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.
(b) Terms defined.

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the streamlined sales and use tax agreement as defined in section two-a of this article.

(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

(4) “Bundled transaction” means the retail sale of two or more products, except real property and services to real property, where: (i) The products are otherwise distinct and identifiable; and (ii) the products are sold for one nonitemized price. A “bundled transaction” does not include the sale of any products in which the “sales price” varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(A) “Distinct and identifiable products” does not include:

(i) Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as wrapping, labels, tags, and instruction guides – that accompany the “retail sale” of the products and are incidental or immaterial to the “retail sale” thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags and express delivery envelopes and boxes;

(ii) A product provided free of charge with the required purchase of another product. A product is “provided free of charge” if the “sales price” of the product purchased does not vary depending on the inclusion of the product “provided free of charge”; or

(iii) Items included in the member state’s definition of “sales price,” as defined in this section.
(B) The term “one nonitemized price” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(C) A transaction that otherwise meets the definition of a “bundled transaction,” as defined in this subdivision, is not a “bundled transaction” if it is:

(i) The “retail sale” of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(ii) The “retail sale” of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(iii) A transaction that includes taxable products and nontaxable products and the “purchase price” or “sales price” of the taxable products is de minimis.

(I) “De minimis” means the seller’s “purchase price” or “sales price” of the taxable products is ten percent or less of the total “purchase price” or “sales price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the “purchase price” and “sales price” of the products to determine if the taxable products are de minimis.
(III) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(iv) A transaction that includes products taxable at the general rate of tax and food or food ingredients taxable at a lower rate of tax and the “purchase price” or “sales price” of the products taxable at the general sales tax rate is de minimis.

(I) “De minimis” means the seller’s “purchase price” or “sales price” of the products taxable at the general sales tax rate is ten percent or less of the total “purchase price” or “sales price” of the bundled products.

(II) Sellers shall use either the “purchase price” or the “sales price” of the products to determine if the products taxable at the general rate of tax are de minimis. Sellers may not use a combination of the “purchase price” and “sales price” of the products to determine if the products taxable at the general rate of tax are de minimis.

(III) Sellers shall use the full term of a service contract to determine if the products taxable at the general rate of tax are de minimis; or

(v) The “retail sale” of exempt tangible personal property, or food and food ingredients taxable at a lower rate of tax, and tangible personal property taxable at the general rate of tax where:

(I) The transaction includes “food and food ingredients”, “drugs”, “durable medical equipment”, “mobility enhancing equipment”, “prosthetic devices” all as defined in article fifteen-b of this chapter; and

(II) Where the seller’s “purchase price” or “sales price” of the taxable tangible personal property taxable at the general rate of tax is fifty percent or less of the total “purchase price” or
“sales price” of the bundled tangible personal property. Sellers may not use a combination of the “purchase price” and “sales price” of the tangible personal property when making the fifty percent determination for a transaction.

(5) “Candy” means a preparation of sugar, honey or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration.

(6) “Certified automated system” or “CAS” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(7) “Certified service provider” or “CSP” means an agent certified under the agreement to perform all of the seller’s sales tax functions.

(8) “Computer” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

(9) “Computer software” means a set of coded instructions designed to cause a “computer” or automatic data processing equipment to perform a task.

(10) “Delivered electronically” means delivered to the purchaser by means other than tangible storage media.

(11) “Delivery charges” means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.
(12) “Dietary supplement” means any product, other than “tobacco”, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraph (i) through (v) of this subdivision;

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label as required pursuant to 21 CFR §101.36, or in any successor section of the code of federal regulations.

(13) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or
indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

(14) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.

(15) “Durable medical equipment” means equipment including repair and replacement parts for the equipment, but does not include “mobility-enhancing equipment”, which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(16) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
(17) “Entity-based exemption” means an exemption based on who purchases the product or service or who sells the product or service.

(18) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, prepared food, or tobacco.

(19) “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment.

(20) “Includes” and “including” when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(21) “Lease” includes rental, hire and license. “Lease” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condi-
tion of this exclusion is that the operator is necessary for the
equipment to perform as designed. For the purpose of this
subparagraph, an operator must do more than maintain, inspect,
or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax
purposes regardless if a transaction is characterized as a lease
or rental under generally accepted accounting principles, the
Internal Revenue Code, the Uniform Commercial Code, or
other provisions of federal, state or local law.

(22) “Load and leave” means delivery to the purchaser by
use of a tangible storage media where the tangible storage
media is not physically transferred to the purchaser.

(23) “Mobility enhancing equipment” means equipment,
including repair and replacement parts to the equipment, but
does not include “durable medical equipment”, which:

(A) Is primarily and customarily used to provide or increase
the ability to move from one place to another and which is
appropriate for use either in a home or a motor vehicle;

(B) Is not generally used by persons with normal mobility;
and

(C) Does not include any motor vehicle or equipment on a
motor vehicle normally provided by a motor vehicle manufac-
turer.

(24) “Model I seller” means a seller that has selected a
certified service provider as its agent to perform all the seller’s
sales and use tax functions, other than the seller’s obligation to
remit tax on its own purchases.

(25) “Model II seller” means a seller that has selected a
certified automated system to perform part of its sales and use
tax functions, but retains responsibility for remitting the tax.
“Model III seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

“Personal service” includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.

(A) “Prepared food” means:

(i) Food sold in a heated state or heated by the seller;

(ii) Two or more food ingredients mixed or combined by the seller for sale as a single item; or

(iii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

(B) “Prepared food” in subparagraph (ii), paragraph (A) of this subdivision (29) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat,
poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code of 2001 so as to prevent food borne illnesses.

(C) Additionally, “prepared food,” as defined in this subdivision does not include:

(i) Food sold by a seller whose proper primary NAICS classification is manufacturing in sector 311, except subsection 3118 (bakeries);

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas.

(30) “Prescription” means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(31) “Prewritten computer software” means “computer software”, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) “Prewritten computer software” includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or
creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

(C) “Prewritten computer software” or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(32) “Product-based exemption” means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.

(33) “Prosthetic device” means a replacement, corrective, or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(34) “Protective equipment” means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(35) “Purchase price” means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.
(36) “Purchaser” means a person to whom a sale of personal property is made or to whom a service is furnished.

(37) “Registered under this agreement” means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(38) “Retail sale” or “sale at retail” means:

(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(39)(A) “Sales price” means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise, without any deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise; and
(vii) Credit for the fair market value of any trade-in.

(B) “Sales price” does not include:

(i) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale;

(ii) Interest, financing and carrying charges from credit extended on the sale of personal property, goods or services, if the amount is separately stated on the invoice, bill of sale or similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.

(40) “Sales tax” means the tax levied under article fifteen of this chapter.

(41) “Seller” means any person making sales, leases or rentals of personal property or services.

(42) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale, or any service furnished by a business that is subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission of this State. The term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer’s, distributor’s or other third-party’s marketing
support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a “service” or “selected service” rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(43) “Soft drink” means nonalcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

(44) “State” means any state of the United States and the District of Columbia.

(45) “Tangible personal property” means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. “Tangible personal property” includes, but is not limited to, electricity, steam, water, gas and prewritten computer software.

(46) “Tax” includes all taxes levied under articles fifteen and fifteen-a of this chapter, and additions to tax, interest and penalties levied under article ten of this chapter.

(47) “Tax Commissioner” means the State Tax Commissioner or his or her delegate. The term “delegate” in the phrase “or his or her delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Division duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.
(48) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax, penalties imposed by article ten of this chapter.

(49) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco or any other item that contains tobacco.

(50) "Use tax" means the tax levied under article fifteen-a of this chapter.

(51) "Use-based exemption" means an exemption based on the purchaser’s use of the product or service.

(52) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter, or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in article fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

As used in this article and articles fifteen and fifteen-a of this chapter, the term “streamlined sales and use tax agreement” or “agreement” means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” includes amendments to the agreement adopted by the implementing states in
Calender years two thousand three, two thousand four, and two
thousand five, but does not include any substantive changes in
the agreement adopted after the sixteenth day of April, two
thousand five.

CHAPTER 12

(Com. Sub. for H. B. 411 — By Mr. Speaker,
Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §19-23-9, §19-23-13b and §19-23-13c
of the Code of West Virginia, 1931, as amended; and to amend
and reenact §29-22A-10b of said code, all relating to amending
certain provisions of the code involving horse and dog racing and
distribution of certain proceeds; providing special funds, to be
established by the Racing Commission, to be used for the
payment of breeders’ awards, restrictive races and stakes purses;
deleting obsolete provisions; deleting the stated objective for the
Fund to aid in the rejuvenation and development of horse tracks
in the state for capital improvements and other purposes; provid­
ing that the Commission establish funds and accounts for each
association and licensee rather than holding funds in deposit in
one fund; deleting current provisions concerning the distribution
of balances remaining in breeders, raisers, sire owners and purse
supplement funds; clarifying the meaning of the phrase “sufficient
horses” for purposes of pari-mutuel thoroughbred horse tracks’
provision of restricted races; providing that the requirement
increasing certain purses in restricted races is only applicable to
thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for more than four consecutive years; providing the Racing Commission may transfer funds back to the general purse fund if less than seventy-five percent of the restricted races fail to receive enough entries; deleting the provision that prohibits associations and licensees who qualify for alternate tax provisions contained in subsection (b), section ten, article twenty-three, chapter nineteen of this code from eligibility for treatment under the provisions of section thirteen-b of said article; providing that on the first day of January, two thousand six, licensed racing associations must have a West Virginia Thoroughbred Racing Breeders’ Program; clarifying disbursement of funds for the benefit of the West Virginia Breeders’ Classic; requiring Racing Commission to conduct a study of the adequacy of funding of certain thoroughbred development funds and requiring a report thereon to the Legislature; allowing for different uses of thoroughbred development funds by thoroughbred racing tracks based upon differences in circumstance; deleting provisions of the Racetrack Video Lottery Act exempting certain licensees from paying into the thoroughbred and greyhound breeders’ funds; increasing maximum amount from the general purse fund for purposes of restricted races for the thoroughbred racetrack which participated in the Thoroughbred Development Fund for at least four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two; and making technical corrections and providing reversion of racetrack video lottery excess net terminal income diverted from the racetrack purse funds to Workers’ Compensation Debt Reduction Fund pursuant to Enrolled Senate Bill No. 1004 which took effect the twenty-ninth day of January, two thousand five, to revert to racetrack purse after a total amount of eleven million dollars of net terminal income and excess net terminal income has been diverted each fiscal year from the purse funds to the workers’ compensation debt.

*Be it enacted by the Legislature of West Virginia:*
That §19-23-9, §19-23-13b and §19-23-13c of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §29-22A-10b of said code be amended and reenacted, all to read as follows:

Chapter
19. Agriculture.
29. Miscellaneous Boards and Officers.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

§19-23-13c. Expenditure of racetrack video lottery distribution.

§19-23-9. Pari-mutuel system of wagering authorized; licensee authorized to deduct commissions from pari-mutuel pools; retention of breakage; auditing; minors.

(a) The pari-mutuel system of wagering upon the results of any horse or dog race at any horse or dog race meeting conducted or held by any licensee is hereby authorized if, and only if, such pari-mutuel wagering is conducted by the licensee within the confines of the licensee’s horse racetrack or dog racetrack and the provisions of section one, article ten, chapter sixty-one of this code relating to gaming shall not apply to the pari-mutuel system of wagering in manner and form as provided in this article at any horse or dog race meeting within this state where horse or dog racing is permitted for any purse by any licensee. A licensee shall permit or conduct only the pari-mutuel system of wagering within the confines of the licensee’s racetrack at which any horse or dog race meeting is conducted or held.
(b) A licensee is hereby expressly authorized to deduct a commission from the pari-mutuel pools as follows:

(1) The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from thoroughbred horse racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning horses, shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day. Out of the commission mentioned in this subdivision, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits out of pari-mutuel pools for each day during the months of January, February, March, October, November and December shall be seven and three hundred seventy-five one-thousandths percent of the pari-mutuel pools and which, out of pari-mutuel pools for each day during all other months, shall be six and eight hundred seventy-five one-thousandths percent of the pari-mutuel pools, which shall take effect beginning fiscal year one thousand nine hundred ninety; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) Any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeders awards, restrictive races and stakes purses as authorized by section thirteen-b of this article, which deposits out of pari-mutuel pools shall, from the effective date of this section, be two
percent of the pools. The remainder of the commission shall be retained by the licensee.

Each licensee that permits or conducts pari-mutuel wagering at the licensee’s thoroughbred horse racetrack shall annually pay five hundred thousand dollars from the special fund required by this section to be established by the licensee for the payment of regular purses offered for thoroughbred racing by the licensee into a special fund established by the Racing Commission for transfer to a pension plan established by the Racing Commission for all back stretch personnel, including, but not limited to, exercise riders, trainers, grooms and stable forepersons licensed by the Racing Commission to participate in horse racing in this state and their dependents.

Each thoroughbred racetrack licensee is authorized to enter into an agreement with its local Horsemen’s Benevolent and Protective Association under which an agreed upon percentage of up to two percent of purses actually paid during the preceding month may be paid to the local Horsemen’s Benevolent and Protective Association from the special fund required by this section for their respective medical trusts for backstretch personnel and administrative fees.

The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day. Out of the commission, as is mentioned in this paragraph, the licensee: (i) Shall pay the pari-mutuel pools tax provided in subsection (b), section ten of this article; (ii) shall make a deposit into a special fund to be established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee, which deposits
out of pari-mutuel pools for each day during the months of January, February, March, October, November and December, for pools involving a combination of two winning horses shall be eight and twenty-five one-hundredths percent and out of pari-mutuel pools for each day during all other months shall be seven and seventy-five one-hundredths percent of the pari-mutuel pools, and involving a combination of three or more winning horses for the months of January, February, March, October, November and December the deposits out of the fund shall be eleven and twenty-five one-hundredths percent of the pari-mutuel pools, and which, out of pari-mutuel pools for each day during all other months, shall be ten and seventy-five one-hundredths percent of the pari-mutuel pools; (iii) shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; and (iv) any licensee which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, shall make a deposit into a special fund to be established by the Racing Commission and to be used for the payment of breeder awards, for restrictive races and stakes purses which deposits out of pari-mutuel pools shall, from the effective date of this section, be two percent of the pools. The remainder of the commission shall be retained by the licensee.

The commission deducted by the licensee under this subdivision may be reduced only by mutual agreement between the licensee and a majority of the trainers and horse owners licensed by subsection (a), section two of this article or their designated representative. The reduction in licensee commissions may be for a particular race, racing day or days or for a horse race meeting. Fifty percent of the reduction shall be retained by the licensee from the amounts required to be paid
into the special fund established by the licensee under the provisions of this subdivision. The Racing Commission shall promulgate any reasonable rules that are necessary to implement the foregoing provisions.

(2) The commission deducted by any licensee from the pari-mutuel pools on harness racing shall not exceed seventeen and one-half percent of the total of the pari-mutuel pools for the day. Out of the commission the licensee shall pay the pari-mutuel pools tax provided in subsection (c), section ten of this article and shall pay one tenth of one percent into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund. The remainder of the commission shall be retained by the licensee.

(3) The commission deducted by any licensee from the pari-mutuel pools on dog racing, except from dog racing pari-mutuel pools involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two or more winning dogs, shall not exceed sixteen and thirty-one-hundredths percent of the total of all pari-mutuel pools for the day. The commission deducted by any licensee from the pari-mutuel pools on dog racing involving what is known as multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning dogs shall not exceed nineteen percent, by a combination of three winning dogs shall not exceed twenty percent and by a combination of four or more winning dogs shall not exceed twenty-one percent of the total of such pari-mutuel pools for the day. The foregoing commissions are in effect for the fiscal years one thousand nine hundred ninety and one thousand nine hundred ninety-one. Thereafter, the commission shall be at the percentages in effect prior to the effective date of this article unless the Legislature, after review, determines otherwise. Out of the commissions, the licensee
shall pay the pari-mutuel pools tax provided in subsection (d),
section ten of this article and one tenth of one percent of such
deposit to the general fund of the county commission of the county in which the racetrack is located. In addition, out of the commissions, if the racetrack is located within a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the Municipal General Fund; or, if the racetrack is located outside of a municipality, then the licensee shall also pay three tenths of one percent of the pari-mutuel pools into the State Road Fund for use by the Division of Highways in accordance with the provisions of this subdivision. The remainder of the commission shall be retained by the licensee.

For the purposes of this section, “municipality” means and includes any Class I, Class II and Class III city and any Class IV town or village incorporated as a municipal corporation under the laws of this state prior to the first day of January, one thousand nine hundred eighty-seven.

Each dog racing licensee, when required by the provisions of this subdivision to pay a percentage of its commissions to the State Road Fund for use by the Division of Highways, shall transmit the required funds, in such manner and at such times as the Racing Commission shall by procedural rule direct, to the State Treasurer for deposit in the State Treasury to the credit of the Division of Highways State Road Fund. All funds collected and received in the State Road Fund pursuant to the provisions of this subdivision shall be used by the Division of Highways in accordance with the provisions of article seventeen-a, chapter seventeen of this code for the acquisition of right-of-way for, the construction of, the reconstruction of and the improvement or repair of any interstate or other highway, secondary road, bridge and toll road in the state. If on the first day of July, one thousand nine hundred eighty-nine, any area encompassing a dog racetrack has incorporated as a Class I, Class II or Class III
city or as a Class IV town or village, whereas such city, town or
village was not incorporated as such on the first day of January,
one thousand nine hundred eighty-seven, then on and after the
first day of July, one thousand nine hundred eighty-nine, any
balances in the State Road Fund existing as a result of payments
made under the provisions of this subdivision may be used by
the State Road Fund for any purpose for which other moneys in
the fund may lawfully be used and in lieu of further payments
to the State Road Fund, the licensee of a racetrack which is
located in the municipality shall thereafter pay three tenths of
one percent of the pari-mutuel pools into the general fund of the
municipality. If no incorporation occurs before the first day of
July, one thousand nine hundred eighty-nine, then payments to
the State Road Fund shall thereafter continue as provided under
the provisions of this subdivision.

A dog racing licensee, before deducting the commissions
authorized by this subdivision, shall give written notification to
the Racing Commission not less than thirty days prior to any
change in the percentage rates for the commissions. The Racing
Commission shall prescribe blank forms for filing the notifica-
tion. The notification shall disclose the following: (A) The
revised commissions to be deducted from the pari-mutuel pools
each day on win, place and show betting and on different forms
of multiple bettings; (B) the dates to be included in the revised
betting; and (C) such other information as may be required by
the Racing Commission.

The licensee shall establish a special fund to be used only
for capital improvements or long-term debt amortization or
both: Provided, That any licensee, heretofore licensed for a
period of eight years prior to the effective date of the amend-
ment made to this section during the regular session of the
Legislature held in the year one thousand nine hundred
eighty-seven, shall establish the special fund to be used only for
capital improvements or physical plant maintenance, or both, at
the licensee’s licensed facility or at the licensee’s commonly
owned racing facility located within this state. Deposits made
into the funds shall be in an amount equal to twenty-five
percent of the increased rate total over and above the applicable
rate in effect as of the first day of January, one thousand nine
hundred eighty-seven, of the pari-mutuel pools for the day. Any
amount deposited into the funds must be expended or liability
therefor incurred within a period of two years from the date of
deposit. Any funds not expended shall be transferred immedi-
ately into the State General Fund after expiration of the
two-year period.

The licensee shall make a deposit into a special fund
established by the licensee and used for payment of regular
purses offered for dog racing, which deposits out of the li-
censee’s commissions for each day shall be three and sev-
enty-five one-hundredths percent of the pari-mutuel pools.

The licensee shall further establish a special fund to be used
exclusively for marketing and promotion programs; the funds
shall be in an amount equal to five percent over and above the
applicable rates in effect as of the first day of January, one
thousand nine hundred eighty-seven, of the total pari-mutuel
pools for the day.

The Racing Commission shall prepare and transmit
annually to the Governor and the Legislature a report of the
activities of the Racing Commission under this subdivision. The
report shall include a statement of: The amount of commissions
retained by licensees; the amount of taxes paid to the state; the
amounts paid to municipalities, counties and the Division of
Highways Dog Racing Fund; the amounts deposited by licens-
ees into special funds for capital improvements or long-term
debt amortization and a certified statement of the financial
condition of any licensee depositing into the fund; the amounts
paid by licensees into special funds and used for regular purses
offered for dog racing; the amounts paid by licensees into
special funds and used for marketing and promotion programs;
and such other information as the racing commission may
consider appropriate for review.

(c) In addition to any commission, a licensee of horse race
or dog race meetings shall also be entitled to retain the legiti-
mate breakage, which shall be made and calculated to the dime,
and from the breakage, the licensee of a horse race meeting
(excluding dog race meetings), shall deposit daily fifty percent
of the total of the breakage retained by the licensee into the
special fund created pursuant to the provisions of subdivision
(1), subsection (b) of this section for the payment of regular
purses.

(d) The director of audit, and any other auditors employed
by the Racing Commission who are also certified public
accountants or experienced public accountants, shall have free
access to the space or enclosure where the pari-mutuel system
of wagering is conducted or calculated at any horse or dog race
meeting for the purpose of ascertaining whether or not the
licensee is deducting and retaining only a commission as
provided in this section and is otherwise complying with the
provisions of this section. They shall also, for the same pur-
poses only, have full and free access to all records and papers
pertaining to the pari-mutuel system of wagering and shall
report to the Racing Commission in writing, under oath,
whether or not the licensee has deducted and retained any
commission in excess of that permitted under the provisions of
this section or has otherwise failed to comply with the provi-
sions of this section.

(e) No licensee shall permit or allow any individual under
the age of eighteen years to wager at any horse or dog racetrack,
knowing or having reason to believe that the individual is under
the age of eighteen years.
(f) Notwithstanding the foregoing provisions of subdivision (1), subsection (b) of this section, to the contrary, a thoroughbred licensee qualifying for and paying the alternate reduced tax on pari-mutuel pools provided in section ten of this article shall distribute the commission authorized to be deducted by subdivision (1), subsection (b) of this section as follows: (i) The licensee shall pay the alternate reduced tax provided in section ten of this article; (ii) the licensee shall pay one tenth of one percent of the pari-mutuel pools into the general fund of the county commission of the county in which the racetrack is located, except if within a municipality, then to the Municipal General Fund; (iii) the licensee shall pay one half of the remainder of the commission into the special fund established by the licensee and to be used for the payment of regular purses offered for thoroughbred racing by the licensee; and (iv) the licensee shall retain the amount remaining after making the payments required in this subsection.

(g) Each kennel which provides or races dogs owned or leased by others shall furnish to the Commission a surety bond in an amount to be determined by the Commission to secure the payment to the owners or lessees of the dogs the portion of any purse owed to the owner or lessee.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

(a) The Racing Commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Special Account — West Virginia Thoroughbred Development Fund”: Provided, That after the West Virginia Lottery Commission has divided moneys between the West
Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning the first day of October, two thousand five, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as “West Virginia Racing Commission Special Account – West Virginia Thoroughbred Development Fund” and shall name the licensee for which the special account has been established: Provided, however, That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two from the eighth day of July, two thousand five until the effective date of the amendment to this section passed during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: Provided further, That the moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, shall be transferred into that licensee’s purse fund until the first day of April, two thousand six. Notice of the amount, date and place...
of the deposits shall be given by the Racing Commission, in writing, to the State Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: 

And provided further, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby created in the State Treasury called the “Administration and Promotion Account”.

(b) The Racing Commission is authorized to expend the moneys deposited in the administration and promotion account at times and in amounts as the Commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the Legislature on the status of the administration and promotion account, including the previous year’s expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section.
Annually, the first three hundred thousand dollars of each fund shall be available for distribution for stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all mares, starting with the breeding season beginning the first day of February through the thirty-first day of July, two thousand four, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The remaining races may be chosen by the committee set forth in subsection (f) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for the breeders’/raisers’ awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders’/raisers’ awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse’s breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision may only be paid on the first one hundred thousand
111 dollars of any purse and not on any amounts in excess of the
112 first one hundred thousand dollars.

113 (2) The owner of a West Virginia sire of an accredited
114 thoroughbred horse that earns a purse in any race at a participat-
115 ing West Virginia meet shall receive a bonus award calculated
116 at the end of the year as a percentage of the fund dedicated to
117 sire owners, which shall be fifteen percent of the fund available
118 for distribution in any one year. The total amount available for
119 the sire owners’ awards shall be distributed according to the
120 ratio of purses earned by the progeny of accredited West
121 Virginia stallions in the participating races for a particular
122 stallion to the total purses earned by the progeny of all accred-123 ited West Virginia stallions in the participating races. However,
124 no sire owner may receive from the fund dedicated to sire
125 owners an amount in excess of thirty-five percent of the
126 accredited earnings for each sire. The bonus referred to in this
127 subdivision shall only be paid on the first one hundred thousand
128 dollars of any purse and not on any amounts in excess of the
129 first one hundred thousand dollars.

130 (3) The owner of an accredited thoroughbred horse that
131 earns a purse in any participating race at a West Virginia meet
132 shall receive a restricted purse supplement award calculated at
133 the end of the year, which shall be twenty-five percent of the
134 fund available for distribution in any one year, based on the
135 ratio of the earnings in the races of a particular race horse to the
136 total amount earned by all accredited race horses in the particip-137 pating races during that year as a percentage of the fund
dedicated to purse supplements. However, the owners may not
138 receive from the fund dedicated to purse supplements an
139 amount in excess of thirty-five percent of the total accredited
140 earnings for each accredited race horse. The bonus referred to
141 in this subdivision shall only be paid on the first one hundred
142 thousand dollars of any purse and not on any amounts in excess
143 of the first one hundred thousand dollars.
145 (4) In no event may purses earned at a meet held at a track
146 which did not make a contribution to the Thoroughbred
147 Development Fund out of the daily pool on the day the meet
148 was held qualify or count toward eligibility for an award under
149 this subsection.

150 (5) Any balance in the breeders/raisers, sire owners and
151 purse supplement funds after yearly distributions shall first be
152 used to fund the races established in subsection (f) of this
153 section. Any amount not so used shall revert into the general
154 account of the Thoroughbred Development Fund for each
155 racing association or licensee for distribution in the next year.

156 Distribution shall be made on the fifteenth day of each
157 February for the preceding year’s achievements.

158 (f) (1) Each pari-mutuel thoroughbred horse track shall
159 provide at least one restricted race per racing day: Provided,
160 That sufficient horses and funds are available. For purposes of
161 this subsection, there are sufficient horses if there are at least
162 seven single betting interests received for the race. The re-
163 stricted race required by this section must be included in the
164 first nine races written in the condition book for that racing day.

165 (2) The restricted races established in this subsection shall
166 be administered by a three-member committee at each track
167 consisting of:

168 (A) The racing secretary;

169 (B) A member appointed by the authorized representative
170 of a majority of the owners and trainers at the thoroughbred
171 track; and

172 (C) A member appointed by the West Virginia Thorough-
173 bred Breeders Association.
(3) The purses for the restricted races established in this subsection shall be twenty percent larger than the purses for similar type races at each track or equal to or of greater value than a comparable race: Provided, That sufficient funds are available: Provided, however, That the twenty percent requirement is applicable only to a thoroughbred racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two.

(4) Restricted races shall be funded by each racing association from:

(A) Moneys placed in the general purse fund up to a maximum of three hundred fifty thousand dollars per year: Provided, That a thoroughbred horse racetrack which has participated in the West Virginia Thoroughbred Development fund for a period of more than four consecutive years prior to the thirty-first day of December, one thousand nine hundred ninety-two, may fund restricted races in an amount not to exceed one million five hundred thousand dollars from the general purse fund.

(B) Moneys as provided in subdivision (5), subsection (e) of this section, which shall be placed in a special fund called the “West Virginia Accredited Race Fund”.

(5) The racing schedules, purse amounts and types of races are subject to the approval of the West Virginia Racing Commission.

(6) If less than seventy-five percent of the restricted races required by this subsection fail to receive enough entries to race, the Racing Commission shall, on a quarterly basis, dedicate funds in each fund back to the general purse fund of the racing association or licensee: Provided, That no moneys
may be dedicated back to a general purse fund if the dedication
would leave less than two hundred fifty thousand dollars in the
fund.

(g) As used in this section, “West Virginia bred-foal”
means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund,
the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West
Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West
Virginia resident, but keeps his or her breeding stock in West
Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West
Virginia resident and does not qualify under subdivision (2) of
this subsection, but either the sire of the West Virginia
bred-foal is a West Virginia stallion, or the mare is covered by
a West Virginia stallion following the birth of that West
Virginia bred-foal.

(i) From the first day of July, two thousand one, West
Virginia accredited thoroughbred horses have preference for
entry in all accredited races at a thoroughbred race track at
which the licensee participates in the West Virginia Thorough-
bred Development Fund.

(j) Beginning the first day of July, two thousand six, any
racing association licensed by the Racing Commission to
conduct thoroughbred racing and permitting and conducting
pari-mutuel wagering under the provisions of this article must
have a West Virginia Thoroughbred Racing Breeders Program.

(k) The Commission shall, during calendar year two
thousand nine, conduct a study of the adequacy of funding
provided for the Thoroughbred Development Fund at any thoroughbred racetrack which has not participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, and shall report its findings and recommendations to the Joint Committee on Government and Finance on or before the first day of December, two thousand nine.

§19-23-13c. Expenditure of racetrack video lottery distribution.

(a) Funds received by the Racing Commission pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, and subdivision (5), subsection (a), section ten-b, article twenty-two-a, chapter twenty-nine of this code, after the effective date of this section together with the balance in the bank account previously established by the Commission to receive those funds shall be deposited in a banking institution of its choice in a special account to be known as “West Virginia Racing Commission Racetrack Video Lottery Account”. Notice of the amount, date and place of each deposit shall be given by the Racing Commission, in writing, to the State Treasurer.

(b) Funds in this account shall be allocated and expended as follows:

(1) For each fiscal year, the first eight hundred thousand dollars deposited in the separate account plus the amount then remaining of the June thirtieth, one thousand nine hundred ninety-seven, balance in the separate account previously established for the West Virginia breeders classic under section thirteen of this article, shall be used by the Commission for promotional activities, advertising, administrative costs and purses for the West Virginia Thoroughbred Breeders Classic, which shall give equal consideration to all horses qualifying
under the West Virginia breeders program for each stake race, based solely on the horses’ sex, age and earnings.

(2) For each fiscal year, the next two hundred thousand dollars deposited into the separate account shall be used by the Commission for promotional activities and purses for open stake races for a race event to be known as the West Virginia Derby to be held at a thoroughbred racetrack which does not participate in the West Virginia Breeders Classic.

(3) For each fiscal year, once the amounts provided in subdivisions (1) and (2) of this subsection have been deposited into separate bank accounts for use in connection with the West Virginia Thoroughbred Breeders Classics and the West Virginia Derby, the Commission shall return to each racetrack all additional amounts deposited which originate during that fiscal year from each respective racetrack pursuant to subdivision (6), subsection (c), section ten, article twenty-two-a, chapter twenty-nine of this code, which returned excess funds shall be used as follows:

(A) For each dog racetrack, one half of the returned excess funds shall be used for capital improvements at the racetrack and one half of the returned excess funds shall be deposited into the West Virginia Racing Commission Special Account - West Virginia Greyhound Breeding Development Fund.

(B) At those thoroughbred racetracks that have participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to the thirty-first day of December, one thousand nine hundred ninety-two, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be equally divided between the West Virginia Thoroughbred Breeders Classic and the West Virginia Thoroughbred Development Fund.
(C) At those thoroughbred horse racetracks which do not participate in the West Virginia Breeders Classic, one half of the returned excess funds shall be used for capital improvements at the licensee’s racetrack and one half of the returned excess funds shall be used for purses for the open stakes race event known as the West Virginia Derby.

(c) All expenditures that are funded under this section must be approved in writing by the West Virginia Racing Commission before the funds are expended for any of the purposes authorized by this section.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10b. Distribution of excess net terminal income.

(a) For all years beginning on or after the first day of July, two thousand one, any amount of net terminal income generated annually by a licensed racetrack in excess of the amount of net terminal income generated by that licensed racetrack during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as follows:

(1) The Commission shall receive forty-one percent of net terminal income, which the Commission shall deposit in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter;

(2) Until the first day of July, two thousand five, eight 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 in article twenty-three, chapter nineteen of this code; on and after the first day of July, two thousand five, the rate shall be four 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) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during 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, the 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) Any amount by which the total amount under this section and subdivision (3), subsection (c), section ten of this article is in excess of the two percent received during 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 municipality 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 county other than a county described in paragraph (A) or (B) of this proviso;

(4) One half of 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-two percent of net terminal income;

(8) 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 each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income shall be distributed pursuant to the provisions of paragraph (B), subdivision (8), subsection (c), section ten of this article;

(9) (A) On and after the first day of July, two thousand five, four percent of net terminal income shall be deposited into the Workers’ Compensation Debt Reduction Fund created in
Provided, That in any fiscal year when the amount of money generated by this subdivision together with the total allocation transferred by the operation of subdivision (9), subsection (c), section ten of this article totals eleven million dollars, all subsequent distributions under this subdivision (9) during that fiscal year shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to other amounts provided in article twenty-three, chapter nineteen of this code;

(B) The deposit of the four percent of net terminal income into the Worker’s Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds, which shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided in article twenty-three, chapter nineteen of this code on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code have been retired or payment of the debt service is 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 in its entirety; and

(10) (A) One percent of the 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; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after
AN ACT to amend and reenact §2-2-1 of the Code of West Virginia, 1931, as amended, relating to state holidays; providing that the fourth Thursday and Friday of November shall be legal holidays; combining Lincoln’s and Washington’s birthdays into a single Presidents’ Day holiday.

Be it enacted by the Legislature of West Virginia:

That §2-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.

§2-2-1. Legal holidays; official acts or court proceedings.
(a) The following days are legal holidays:

1. The first day of January is “New Year’s Day”;
2. The third Monday of January is “Martin Luther King’s Birthday”;
3. The third Monday of February is “Presidents’ Day”;
4. The last Monday in May is “Memorial Day”;
5. The twentieth day of June is “West Virginia Day”;
6. The fourth day of July is “Independence Day”;
7. The first Monday of September is “Labor Day”;
8. The second Monday of October is “Columbus Day”;
9. The eleventh day of November is “Veterans’ Day”;
10. The fourth Thursday and Friday of November are the “Thanksgiving Holidays”;
11. The twenty-fifth day of December is “Christmas Day”;
12. Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;
13. General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and
14. Any day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.
(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: Provided, That this subsection (b) shall not apply to subdivisions (12), (13) and (14), subsection (a) of this section.

(c) Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

(d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next
59 day that is not a Saturday, Sunday, legal holiday or designated
day off.

(f) With regard to the courts of this state, the computation
of periods of time, the specific dates or days when an act, event,
default or omission is required or allowed to occur and the
relationship of those time periods and dates to Saturdays,
Sundays, legal holidays, or days designated as weather or other
emergency days pursuant to section two of this article are
governed by rules promulgated by the Supreme Court of
Appeals.

(g) The provisions of this section do not increase or
diminish the legal school holidays provided in section two,
article five, chapter eighteen-a of this code.

CHAPTER 14

(S. B. 4006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §12-4-14 of the Code of West
Virginia, 1931, as amended, relating to accountability of persons
receiving state funds or grants; requiring reports or sworn
statements for certain state funds or grants; giving Secretary of
the Department of Administration rule-making authority;
providing for the barring of persons from receiving state grants or
funds; providing for the submission of information on sworn
statements or reports to the Legislative Auditor; authorizing the
Legislative Auditor to perform audits in certain circumstances;
requiring the Legislative Auditor to inform the State Treasurer if certain reports or sworn statements are not submitted within a certain period; and providing criminal penalties for filing a fraudulent sworn statement of expenditures, a fraudulent sworn statement or a fraudulent report.

_Be it enacted by the Legislature of West Virginia:_

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.**

**§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.**

1 (a) For the purposes of this section:

1. (1) “Grantor” means a state spending unit awarding a state grant.

1. (2) “Person” includes any corporation, partnership, association, individual or other legal entity. The term “person” does not include a state spending unit or a local government as defined in section one-a, article nine, chapter six of this code.

1. (3) “Report” means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

1. (4) “State grant” means funding provided by a state spending unit, regardless of the original source of the funds, to a person upon application for a specific purpose. The term “state grant” does not include: (A) Payments for goods and services
purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds: Provided, That notwithstanding the provisions of this subdivision, funding provided pursuant to section twelve, article two, chapter five-b is included within the term "state grant"; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U. S. C. 7501, et seq. The term "state grant" does not include formula distributions to volunteer and part-volunteer fire departments made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter.

(b) (1) Any person who receives one or more state grants in the amount of fifty thousand dollars or more in the aggregate in a state’s fiscal year shall file with the grantor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, as published on the twenty-seventh day of June, two thousand three, and submitted within the period provided in this section may be substituted for the report.

(2) Any person who receives a state grant in an amount less than fifty thousand dollars or who is not required to file a report because an audit has been conducted or substituted as provided
by subdivision (1) of this subsection shall file with the grantor a sworn statement of expenditures made under the grant.

(3) Reports and sworn statements of expenditures required by subdivisions (1) and (2) of this subsection shall be filed within two years of the end of the person’s fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the person receiving the state grant. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

c (1) Any person failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) of this section for state grant funds disbursed after the first day of July, two thousand three, is barred from subsequently receiving state grants until the person has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any persons failing to file a required report or sworn statement of expenditures within the required period provided in subdivision (3), subsection (b) of this section for a state grant disbursed after the first day of July, two thousand three, to the Legislative Auditor for purposes of debarment from receiving state grants.

d (1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, take reasonable actions to verify that the
person is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the person seeking the state grant provide a sworn statement from an authorized representative that the person has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the Legislative Auditor by the grantor that the person has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided in subsection (e) of this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the Legislative Auditor within thirty days of receipt by the grantor.

(4) The grantor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) The Secretary of the Department of Administration has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to assist in implementing the provisions of subsections (a), (b), (c) and (d) of this section.
Any state agency administering a state grant shall, in the manner designated by the Legislative Auditor, notify the Legislative Auditor of the maximum amount of funds to be disbursed, the identity of the person authorized to receive the funds, the person’s fiscal year and federal employer identification number and the purpose and nature of the state grant within thirty days of making the state grant or authorizing the disbursement of the funds, whichever is later. If the state grant was awarded prior to the first day of October, two thousand five, the grantor shall provide the information required by this section by the first day of December, two thousand five.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter, the Legislative Auditor requests and in the manner designated by the Legislative Auditor.

(3) The Legislative Auditor shall maintain a list identifying persons who have failed to file reports and sworn statements required by this section. The list may be in the form of a computerized database that may be accessed by state agencies over the Internet.

(f) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the Legislative Auditor at no cost to the grantee.

(g) (1) Volunteer and part-volunteer fire departments receiving formula distributions pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter shall either:

(A) File a report, as defined in subdivision (3), subsection (a) of this section with the Legislative Auditor within the same
time frames as are required for sworn statements of annual
expenditures to be filed under this section. The report shall be
made by an independent certified public accountant at the cost
of the volunteer or part-volunteer fire department. The scope of
the report is limited to showing that the funds distributed were
spent for authorized purposes; or

(B) File a sworn statement of annual expenditures with the
Legislative Auditor on or before the fourteenth day of February
of each year. The sworn statement of expenditures shall be
signed by the chief or director of the volunteer fire department
and shall be made under oath and acknowledged before a notary
public.

(2) If the sworn statement or report required by this
subsection is not filed on or before the fifteenth day of May,
unless the time period is extended by the Legislative Auditor,
the Legislative Auditor may conduct an audit of the volunteer
or part-volunteer fire department.

(3) If the sworn statement of annual expenditures or report
required by this subsection is not filed with the Legislative
Auditor by the first day of July, unless the time period is
extended by the Legislative Auditor, the Legislative Auditor
shall notify the State Treasurer who shall withhold payment of
any amount that would otherwise be distributed to the fire
department under the provisions of sections fourteen-d and
thirty-three, article three, chapter thirty-three of this code and
section seven, article twelve-c of said chapter until the report is
complete. Moneys withheld pursuant to this subdivision are to
be deposited in the special revenue account created in the State
Treasury in subdivision (4) of this subsection.

(4) The Legislative Auditor may assign an employee or
employees to perform audits or reviews at the direction of the
Legislative Auditor of the disbursement of state grant funds to
volunteer fire departments. The volunteer fire department shall
cooperate with the Legislative Auditor, the Legislative Auditor's employees and the State Auditor in performing their duties under this section. If the Legislative Auditor determines a volunteer fire department is not cooperating, the Legislative Auditor shall notify the State Treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter until the Legislative Auditor informs the Treasurer that the fire department has cooperated as required by this section. The State Treasurer shall pay the amount withheld into a special revenue account hereby created in the State Treasury and designated the "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld into the special revenue account, the Legislative Auditor informs the State Treasurer of continued noncooperation by the fire department, the State Treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(5) Whenever the State Auditor performs an audit of a volunteer fire department for any purpose the Auditor shall also conduct an audit of other state funds received by the fire department pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section seven, article twelve-c of said chapter. The Auditor shall send a copy of the audit to the Legislative Auditor. The Legislative Auditor may accept an audit performed by the Auditor in lieu of performing an audit under this section.

(6) If the Legislative Auditor is notified by a grantor that a fire department has failed to file a report or a sworn statement of expenditures for a state grant it received, the Legislative Auditor shall notify the Treasurer who shall withhold further
distributions to the fire department in the same manner provided in subdivision (3) of this subsection.

(h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of article one, chapter thirty-nine-a of this code.

(i) Any person who files a fraudulent sworn statement of expenditures under subsection (b) or (g) of this section, a fraudulent sworn statement under subsection (d) of this section or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 15

(H. B. 407 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §5F-2-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section designated §5F-2-7, relating to the power and authority of department secretaries to transfer employees between departments; establishing guidelines for transfer of employees; protecting rights of transferred employees; requiring annual reports; and requiring promulgation of emergency and legislative rules.
Be it enacted by the Legislature of West Virginia:

That §5F-2-2 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 §5F-2-7, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-2. Power and authority of secretary of each department.

§5F-2-7. Interdepartmental transfer of permanent state employees.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently and economically, and develop goals, objectives, policies and plans that are necessary or desirable for the effective, efficient and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members, and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of section seven of this article;
(5) Delegate, assign, transfer or combine responsibilities or
duties to or among employees, other than administrators or
board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by
the Governor, and transfer within the department funds appro-
priated to the various agencies of the department which are not
expended due to cost savings resulting from the implementation
of the provisions of this chapter: Provided, That no more than
twenty-five percent of the funds appropriated to any one agency
or board may be transferred to other agencies or boards within
the department: Provided, however, That no funds may be
transferred from a special revenue account, dedicated account,
capital expenditure account or any other account or funds
specifically exempted by the Legislature from transfer, except
that the use of appropriations from the State Road Fund
transferred to the Office of the Secretary of the Department of
Transportation is not a use other than the purpose for which the
funds were dedicated and is permitted: Provided further, That
if the Legislature by subsequent enactment consolidates
agencies, boards or functions, the appropriate secretary may
transfer the funds formerly appropriated to the agency, board or
function in order to implement consolidation. The authority to
transfer funds under this section shall expire on the thirtieth day
of June, two thousand five;

(8) Enter into contracts or agreements requiring the
expenditure of public funds, and authorize the expenditure or
obligation of public funds as authorized by law: Provided, That
the powers granted to the secretary to enter into contracts or
agreements and to make expenditures or obligations of public
funds under this provision shall not exceed or be interpreted as
authority to exceed the powers granted by the Legislature to the
various commissioners, directors or board members of the
various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: Provided, That the powers granted to the secretary to lease, purchase, convey or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary’s department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this code, to implement and make effective the powers, authority and duties granted and imposed by the provisions of this chapter in accordance with the provisions of chapter twenty-nine-a of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in section two, article one, chapter twenty-nine-a of this code, by any administrator, agency or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate from time to time to facilitate execution of the powers, authority and duties delegated to the secretary; and

(15) Take any other action involving or relating to internal management not otherwise prohibited by law.
(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

1. The elimination, reduction and restriction of the state’s vehicle or other transportation fleet;

2. The elimination, reduction and restriction of state government publications, including annual reports, informational materials and promotional materials;

3. The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment and services;

4. The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

5. The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

6. The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any program.
(d) The layoff and recall rights of employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter twenty-nine of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: Provided, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over programs which are payors for prescription drugs, including but not limited to, the Public Employees Insurance Agency, the Children's Health Insurance Program, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, the Workers' Compensation Fund, state colleges and universities, public hospitals, state or local institutions including nursing homes and veteran's homes, the Division of Rehabilitation, public health departments, the Bureau of Medical Services and other programs that are payors for prescription drugs, shall cooperate with the Office of the Pharmaceutical Advocate established pursuant to section four, article sixteen-d, chapter five of this code for the purpose of purchasing prescription drugs for any program over which they have authority.

§5F-2-7. Interdepartmental transfer of permanent state employees.
(a) A department secretary may enter into a memorandum of understanding with another department secretary to transfer a permanent state employee from a position that is to be consolidated or eliminated, to a funded vacant position in another Department, in accordance with the provisions of this section and the law. To support the transfer of the employee, a department secretary may also transfer furniture and equipment, except motor vehicles and any assets purchased by designated funds for specific uses and purposes, the removal of which is prohibited by law or would jeopardize federal funds, grants or other funding sources.

(b) The transferred employee shall receive the same level of benefits and rate of compensation or higher, and shall retain the same level of seniority.

(c) An employee shall be given notice of the proposed transfer at least fifteen days prior to the transfer. During the notice period, an affected employee may agree to be voluntarily transferred.

(d) If an employee does not volunteer to be transferred, then an involuntary transfer may be ordered. An involuntary transfer shall begin with the least senior permanent employee who qualifies for the position.

(e) A classified employee who is transferred shall retain his or her classified status: Provided, That any transfer shall be made in accordance with the law.

(f) An involuntary transfer may be rejected by an employee if the involuntary transfer would require the employee to travel thirty miles or more, one way, than the distance the employee currently travels from his or her current job site.

(g) An employee who qualifies for and chooses to reject a transfer shall be laid off in accordance with the law.
(h) Nothing in this section shall abridge any other rights provided by law.

(i) Prior to the thirty-first day of December, two thousand five, the Division of Personnel shall promulgate an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.

(j) The Division of Personnel is authorized to promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section.

(k) Annually, on or before the first day of January, the Division of Personnel shall report to the Joint Committee on Government and Finance, on all interdepartmental employee transfers, including but not limited to, voluntary and involuntary transfers, furniture and equipment transfers, and the Departments involved in the transfers.

CHAPTER 16

(H. B. 403 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed September 10, 2005; in effect from passage.]
[Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §15-2A-12 of the Code of West Virginia, 1931, as amended, relating to benefits to dependents of a state trooper who dies in performance of duties or dies after retirement due to service-related disability.
Be it enacted by the Legislature of West Virginia:

That §15-2A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-12. Awards and benefits to dependents of member – When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 The surviving spouse, the dependent child or children or dependent parent or parents of any member who has lost or shall lose his or her life by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members while the member was engaged in the performance of his or her duties as a member of the Department, or the survivor of a member who dies from any cause after having been retired pursuant to the provisions of section nine of this article, is entitled to receive and shall be paid from the Fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime, one or the other of two amounts, which shall become immediately available and which shall be the greater of:

1 (1) An amount equal to nine tenths of the base salary received in the preceding twelve-month employment period by the deceased member: Provided, That if the member had not been employed with the Department for twelve months prior to his or her death, the amount of monthly salary shall be annualized for the purpose of determining the benefit; or

21 (2) The sum of ten thousand dollars.

In addition thereto, the surviving spouse is entitled to receive and there shall be paid to the person one hundred
fifty dollars monthly for each dependent child or children. If the surviving spouse dies or if there is no surviving spouse, there shall be paid monthly to each dependent child or children from the Fund a sum equal to one third of the surviving spouse’s entitlement. If there is no surviving spouse and no dependent child or children, there shall be paid annually in equal monthly installments from the Fund to the dependent parents of the deceased member during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is but one dependent parent surviving, that parent is entitled to receive during his or her lifetime one half the amount which both parents, if living, would have been entitled to receive.

Any person qualifying as a surviving dependent child under this section, in addition to any other benefits due under this or other sections of this article, is entitled to receive a scholarship to be applied to the career development education of that person. This sum, up to but not exceeding seven thousand five hundred dollars, shall be paid from the Fund to any university or college in this state or to any trade or vocational school or other entity in this state approved by the Board, to offset the expenses of tuition, room and board, books, fees or other costs incurred in a course of study at any of these institutions so long as the recipient makes application to the Board on an approved form and under rules provided by the Board, and maintains scholastic eligibility as defined by the institution or the Board. The Board may by appropriate rules define age requirements, physical and mental requirements, scholastic eligibility, disbursement methods, institutional qualifications and other requirements as necessary and not inconsistent with this section.

Awards and benefits for a surviving spouse or dependents of a member received under any section or any of the provisions of this retirement system are in lieu of receipt of any
benefits for these persons under the provisions of any other state retirement system. Receipt of benefits under any other state retirement system is in lieu of any right to receive any benefits under this retirement system, so that only a single receipt of state retirement benefits occurs.

It is the intent of the Legislature that the levels of benefits provided by operation of this section from the effective date of the enactment of this section during the regular session of the Legislature, two thousand five, be the same levels of benefits as provided by this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five. Accordingly, the effective date of the operation of this section as amended and reenacted during the fourth extraordinary session of the Legislature, two thousand five, is expressly made retrospective to the ninth day of April, two thousand five.

CHAPTER 17

(Com. Sub. for H. B. 413 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed September 13, 2005; in effect November 1, 2005.] [Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to providing an increase in the annual base salary of all sworn state police personnel.

Be it enacted by the Legislature of West Virginia:
That §15-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system; salaries; exclusion from wage and hour law, with supplemental payment; legislative rule; bond; leave time for members called to duty in guard or reserves.

(a) The Superintendent shall establish within the West Virginia State Police a system to provide for: The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant and first lieutenant; the classification of nonsupervisory members within the field operations force to the ranks of trooper, senior trooper, trooper first class or corporal; the classification of members assigned to the forensic laboratory as criminalist I-VII; and the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII.

(b) The Superintendent may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the purpose of ensuring consistency, predictability and independent review of any system developed under the provisions of this section.

(c) The Superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list.

(d) Beginning on the first day of November, two thousand five, and continuing thereafter, members shall receive annual salaries as follows:
### ANNUAL SALARY SCHEDULE (BASE PAY)

#### SUPERVISORY AND NONSUPERVISORY RANKS

<table>
<thead>
<tr>
<th>Rank</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
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</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,218.50</td>
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<tr>
<td>Cadet Trooper After Training</td>
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<td>Trooper Second Year</td>
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<td>Trooper Third Year</td>
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<td>Trooper Fourth &amp; Fifth Year</td>
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<td>Senior Trooper</td>
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<tr>
<td>Trooper First Class</td>
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<td></td>
</tr>
<tr>
<td>Corporal</td>
<td>$38,858</td>
<td></td>
</tr>
<tr>
<td>Sergeant</td>
<td>$43,034</td>
<td></td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$45,122</td>
<td></td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>$47,210</td>
<td></td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>$49,298</td>
<td></td>
</tr>
<tr>
<td>Captain</td>
<td>$51,386</td>
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<tr>
<td>Major</td>
<td>$53,474</td>
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<tr>
<td>Lieutenant Colonel</td>
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### ADMINISTRATION SUPPORT

#### SPECIALIST CLASSIFICATION

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<tr>
<th>Class</th>
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<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$32,594</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>$34,682</td>
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<td>VI</td>
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<td>VII</td>
<td>$47,210</td>
<td></td>
</tr>
<tr>
<td>VIII</td>
<td>$49,298</td>
<td></td>
</tr>
</tbody>
</table>

### CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Class</th>
<th>Monthly Salary</th>
<th>Annual Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$32,594</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>$34,682</td>
<td></td>
</tr>
</tbody>
</table>
Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section, for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: At the end of five years of service with the West Virginia State Police, the member shall receive a salary increase of six hundred dollars to be effective during his or her next three years of service and a like increase at three-year intervals thereafter, with the increases to be cumulative.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police are excluded from the provisions of state wage and hour laws.
law. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour law prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour law, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the Superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with article three, chapter twenty-nine-a of this code to establish the number of hours per month which constitute the standard work month for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard work month. The Superintendent shall certify monthly to the West Virginia State Police’s payroll officer the names of those members who have worked in excess of the standard work month and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed two hundred thirty-six dollars monthly. The Superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the Superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of five thousand dollars payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.
(i) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the Armed Forces of the United States annually shall be granted, upon request, leave time not to exceed thirty calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18

(S. B. 4010 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed September 13, 2005; in effect from passage.] [Approved by the Governor on September 28, 2005.]

AN ACT to amend and reenact §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, all relating to the proposed merger of the Teachers’ Defined Contribution Retirement System with the State Teachers Retirement System; amending certain definitions; removing the requirement that the state deposit money to cover any additional unfunded liability before the merger; clarifying credit receipt and asset calculations for transfer; clarifying when certain contributions shall be paid; clarifying loan eligibility; establishing date on which money must be in a member’s account to be eligible to vote in the merger election; requiring payment of contribution for full service credit; adding the Board’s ability to do all things necessary to maintain the current retirement system during any transition period; clarifying provisions regarding
validity of election result; clarifying that the member may select either periodic payments or lump sum distribution of the member’s total vested account at the date of merger if certain conditions are met; and technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12 and §18-7C-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7C. MERGER OF TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM WITH STATE TEACHERS RETIREMENT SYSTEM.

§18-7C-2. Legislative findings and purpose.
§18-7C-3. Definitions.
§18-7C-4. Merger.
§18-7C-5. Notice, education, record-keeping requirements.
§18-7C-6. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.
§18-7C-7. Service credit in State Teachers Retirement System following merger; adjustments.
§18-7C-8. Election; board may contract for professional services.
§18-7C-9. Election considered final.
§18-7C-10. Qualified domestic relations orders.
§18-7C-11. Vesting.
§18-7C-12. Minimum guarantees.
§18-7C-13. Due process and right to appeal.

§18-7C-2. Legislative findings and purpose.

(a) The Legislature declares that the State of West Virginia and its citizens have always believed in a strong public education system. The Constitution of this state mandates a thorough and efficient public education system. The Legislature notes that the quality of our state’s education system is dependent, inter alia, upon the motivation and quality of its teachers and educational service personnel.
(b) The Legislature finds and declares that the State of West Virginia is privileged to be the home of some of the best teachers and education service personnel in this nation and that our teachers and education service personnel are dedicated and hard-working individuals. The Legislature further finds and declares that our teachers and education service personnel deserve a retirement program whereby they know in advance what their retirement benefit will be, a defined benefit retirement program where our teachers and service personnel will not have to bear the risk of investment performance to receive their full retirement benefit. The Legislature notes that uncertainty exists in the investment markets, especially in the post-September eleventh era, and that placing this risk and uncertainty upon the state in the form of a defined benefit plan will protect and ensure a meaningful retirement benefit for our teachers and educational service personnel.

(c) The Legislature declares that it is in the best interests of the teachers and public education in this state, and conducive to the fiscal solvency of the State Teachers Retirement System, that the Teachers’ Defined Contribution Retirement System be merged with the State Teachers Retirement System.

(d) The Legislature also finds that a fiscally sound retirement program with an ascertainable benefit aids in the retention and recruitment of teachers and school service personnel and that the provisions of this article are designed to accomplish the goals set forth in this section.

(e) The Legislature has studied this matter diligently and in making the determination to merge the two plans has availed itself of an actuarial study of the proposed merger by the actuary of the Consolidated Public Retirement Board and has engaged the service of two independent actuaries.

(f) The Legislature further finds and declares that members of a defined contribution system who must bear the attendant
market risk and performance of their investments are truly being provided a significant and greater benefit where the defined contribution system is replaced with a defined benefit system in which the employer bears the risk of market fluctuations and investment performance, especially where those members decide through an election process whether to trade the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

1. “Assets” means all member contributions and employer contributions made on the member’s behalf to the Defined Contribution Retirement System and earnings thereon, less any applicable fees as approved by the board: Provided, That if a member has withdrawn or cashed out any amounts, the amounts must have been repaid.

2. “Board” means the Consolidated Public Retirement Board established in article ten-d, chapter five of this code, and its employees.

3. “Date of merger” means, in the event of a positive vote on the merger, the first day of July, two thousand six.

4. “Defined Contribution Retirement System” means the Teachers’ Defined Contribution Retirement System established in article seven-b of this chapter.

5. “Salary” means:

   A. For a member contributing to the Defined Contribution Retirement System during the two thousand five fiscal year, the actual salary earned for the two thousand five fiscal year divided by the employment service earned in the two thousand five fiscal year.
(B) For a member not contributing to the Defined Contribution Retirement System during the two thousand five fiscal year, the contract salary on the date of rehire.

(6) "State Teachers Retirement System" means the State Teachers Retirement System established in article seven-a of this chapter.

§18-7C-4. Merger.

(a) Subject to the provisions of subsection (b) of this section, on the first day of July, two thousand six, the Defined Contribution Retirement System shall be merged and consolidated with the State Teachers Retirement System pursuant to the provisions of this article.

(b) If a majority of the eligible voting members of the Teachers’ Defined Contribution Retirement System do not elect in favor of the merger, then all of the provisions of this article are void and of no force and effect and the Defined Contribution Retirement System continues as the retirement system for all members in that system as of the thirtieth day of June, two thousand six.

§18-7C-5. Notice, education, record-keeping requirements.

(a) Commencing not later than the first day of August, two thousand five, the Consolidated Public Retirement Board shall begin an educational program with respect to the merger of the Defined Contribution Retirement System with the State Teachers Retirement System.

(1) This educational program shall address, at a minimum:

(A) The law providing for the merger;

(B) The mechanics of the merger;
(C) The election process;
(D) Relevant dates and time periods;
(E) The benefits, potential advantages and potential disadvantages if members fail or refuse to approve the merger and thereby elect to remain in the Defined Contribution Retirement System;
(F) The benefits, potential advantages and potential disadvantages of becoming a member of the State Teachers Retirement System;
(G) Potential state and federal tax implications in general attendant to the various options available to the members; and
(H) Any other pertinent information considered relevant by the board.

(2) The board shall disseminate the information through:
(A) Its website;
(B) Computer programs;
(C) Written or electronic materials, or both, delivered to each member;
(D) Classes or seminars, if in the best judgment of the board classes or seminars are required to provide the necessary education for a member to make an informed decision with respect to the election;
(E) At the discretion of the board, through a program of individual counseling which is optional on the part of the member; and
(F) Through any other educational program considered necessary by the board.
(b) The board shall provide each member with a copy of the written or electronic educational materials and with a copy of the notice of the election.

(1) The notice shall provide full and appropriate disclosure regarding the merger and the election process, including the date of the election.

(2) The board also shall cause notice of the election to be published in at least ten newspapers of general circulation in this state. This notice shall be:

(A) By Class III legal advertisement published in accordance with the provisions of article three, chapter fifty-nine of this code; and

(B) Published not later than thirty days prior to the beginning of the election period and not sooner than sixty days prior to the beginning of the election period pursuant to section eight of this article.

(c) It is the responsibility of each member of the Defined Contribution Retirement System to keep the board informed of his or her current address. A member who does not is considered to have waived his or her right to receive any information from the board with respect to the purposes of this article.

(d) Once the board has complied with the provisions of this section, each member of the Defined Contribution Retirement System is considered to have actual notice of the election and all matters pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution Retirement System to State Teachers Retirement System; contributions; loans.

(a) If a majority of members voting elect to merge the Defined Contribution Retirement System into the State Teachers Retirement System:
(1) The consolidation and merger is governed by the provisions of this article;

(2) The Defined Contribution Retirement System does not exist after the thirtieth day of June, two thousand six; and

(3) All members of that system become members of the State Teachers Retirement System as provided in this article.

(b) Following the election, if the vote is in favor of the merger, the board shall transfer all properties held in the Defined Contribution Retirement System’s Trust Fund to the State Teachers Retirement System.

(c) To receive full credit in the State Teachers Retirement System for service in the Defined Contribution Retirement System for which assets are transferred, members shall pay into the State Teachers Retirement System a one and one-half percent contribution. This contribution shall be calculated as one and one-half percent of the member’s estimated total earnings for which assets are transferred. Except as otherwise provided in this section, each member shall pay the contribution required no later than the thirtieth day of June, two thousand seven.

(1) For a member contributing to the Defined Contribution Retirement System at any time during the two thousand five fiscal year and commencing membership in the State Teachers Retirement System on the first day of July, two thousand six:

(A) The estimated total earnings shall be calculated based on the member’s salary and the member’s age nearest birthday on the thirtieth day of June, two thousand five;

(B) This calculation shall apply both an annual backward salary scale from that date for prior years’ salaries and a forward salary scale for the salary for the two thousand six fiscal year.
(2) For a member not contributing to the Defined Contribution Retirement System during the two thousand five fiscal year:

(A) The estimated total earnings shall be calculated based on the member’s salary and the member’s age nearest birthday on the member’s date of rehire.

(B) This calculation shall apply a backward salary scale from the member’s date of rehire for prior years’ salaries.

(3) The calculations in subdivisions (1) and (2) of this subsection are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System Actuarial Valuation as of the first day of July, two thousand four, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) The board shall make available to each member a loan for the purpose of paying all or part of the one and one-half percent contribution required in this section. The loan shall be offered in accordance with the provisions of section thirty-four, article seven-a of this chapter.

(1) Notwithstanding any provision of this code, rule or policy of the board to the contrary, the interest rate on any such loan may not exceed seven and one-half percent per annum. The amount total borrowed may not exceed twelve thousand dollars.

(2) In the event a loan made pursuant to this section is used to pay the one and one-half percent, the board shall make any necessary adjustments at the time the loan is made.

(3) Subject to the provisions of subdivision (4) of this section, the board shall make this loan available for members until the thirtieth day of June, two thousand seven.
Upon returning to employment, a member who has left employment but not withdrawn his or her funds shall pay the one and one-half percent contribution within one year of being rehired. The member is eligible for one year following the date of rehire to obtain a loan for paying the contribution.

The board shall develop and institute a payroll deduction program for repayment of the loan established in this section.

If the merger and consolidation is duly elected:

(1) As of the first day of July, two thousand six, the members' contribution rate becomes six percent of his or her salary or wages; and

(2) All members who make a contribution into the State Teachers Retirement System on or after the first day of July, two thousand six, are governed by the provisions of article seven-a of this chapter, subject to the provisions of this article.

Subject to the provisions of subdivision (1) of this subsection, if a member has withdrawn or cashed out part of his or her assets, that member will not receive credit for those moneys cashed out or withdrawn. The board shall make a determination as to the amount of credit a member loses based on the periods of time and the amounts he or she has withdrawn or cashed out, which shall be expressed as a loss of service credit.

(1) A member may repay those amounts he or she previously cashed out or withdrew, along with interest as determined by the board, and receive the same credit as if the withdrawal or cash-out never occurred. Such a member also shall pay the one and one-half percent contribution to receive full credit for the cashed-out or withdrawn amounts being repaid to the State Teachers Retirement System.
(2) The loan provided in this section is not available to members to repay previously cashed out or withdrawn moneys.

(3) If the repayment occurs five or more years following the cash-out or withdrawal, the member also shall repay any forfeited employer contribution account balance along with interest determined by the board.

(h) Notwithstanding any provision of subsection (g) to the contrary, if a member has cashed out or withdrawn any of his or her assets after the last day of June, two thousand one, and that member chooses to repurchase that service after the thirtieth day of June, two thousand six, the member shall repay the previously distributed amounts and any applicable interest to the State Teachers Retirement System.

(i) Any service in the State Teachers Retirement System a member has before the date of the merger is not affected by the provisions of this article.

§18-7C-7. Service credit in State Teachers Retirement System following merger; adjustments.

(a) Any member transferring all of his or her assets from the Defined Contribution Retirement System to the State Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is entitled to service credit in the State Teachers Retirement System for each year or part of a year, as governed by the provisions of article seven-a of this chapter, the member worked and contributed to the Defined Contribution Retirement System.

(b) Any member who has made withdrawals or cash outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.
(c) Any member’s Defined Contribution Retirement System service credit will be reduced by twenty-five percent if the member does not pay the one and one-half percent contribution required by this article upon transfer to the State Teachers Retirement System.

§18-7C-8. Election; board may contract for professional services.

(a) The board shall arrange for and hold an election for the members of the Defined Contribution Retirement System who are eligible to vote, pursuant to the provisions of subsection (d) of this section, on the issue of merging and consolidating the Defined Contribution Retirement System into the State Teachers Retirement System.

(b) If a majority of the eligible voters casting ballots in the election votes in the affirmative on the issue:

(1) All members of the Defined Contribution Retirement System will transfer, or have transferred, all assets held by them or on their behalf in the Defined Contribution Retirement System to the State Teachers Retirement System;

(2) On the date of the merger each member becomes a member and is entitled to the benefits of the State Teachers Retirement System; and

(3) Each member is governed by the provisions of the State Teachers Retirement System subject to the provisions of this article.

(c) If fewer than one half of the members eligible to vote of the Defined Contribution Plan cast ballots in the election, the election is not valid and binding.

(d) Any person who has one dollar or more in assets in the Defined Contribution Retirement System on the last day of
December, two thousand five, may and is eligible to vote in the election.

(e) Notwithstanding any other provision of this code to the contrary, the board may do all things necessary and convenient to maintain the Defined Contribution Retirement System and the State Teachers Retirement System during the transitional period and may retain the services of the professionals it considers necessary to do so. The board may also retain the services of the professionals it deems necessary to:

(1) Assist in the preparation of educational materials for members of the Defined Contribution Retirement System who are eligible to vote on the merger to inform these members of their options in the election;

(2) Assist in the educational process of the members who are eligible to vote on the merger;

(3) Assist in the election process and the election; and

(4) Ensure compliance with all relevant state and federal laws.

(f) Due to the time constraints inherent in the merger process set forth in this article in specific, and due to the nature of the professional services required by the Consolidated Public Retirement Board in general, the provisions of article three, chapter five-a of this code, relating to the Division of Purchasing of the Department of Administration do not apply to any contracts for any actuarial services, investment services, legal services or other professional services authorized under the provisions of this article.

(g) The election may be held through certified mail or in any other method the board determines is in the best interest of the members. Each ballot shall contain the following language,
By casting this ballot I am making an educated, informed and voluntary choice as to my retirement and the retirement system of which I wish to be a member. I am also certifying that I understand the consequences of my vote in this election.” Each ballot shall be signed by the member voting. The board shall retain the ballots in a permanent file. Any unsigned ballot is void.

The election period shall begin not later than the first day of March, two thousand six. The board shall ascertain the results of the election not later than the last day of March, two thousand six. The board shall certify the results of the election to the Governor, the Legislature and the members not later than the fifth day of April, two thousand six.

The election period terminates and votes may not be cast or counted after the twelfth day of March, two thousand six, unless the election is conducted through the United States mail. If conducted through the mail, any ballot postmarked later than the twelfth day of March, two thousand six, is void and may not be counted.

The board shall take all necessary steps to see that the merger does not affect the qualified status with the Internal Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

(a) The election is considered final and each member, whether he or she voted or failed to vote, is bound by the results of the election. Every member is considered to have made an informed, educated, knowing and voluntary decision and choice with respect to the election. Those members who failed or refused to vote are also considered to have made an informed, educated, knowing and voluntary decision and choice with respect to the election and voting and are bound by the results of the election as if he or she had voted in the election.
(b) Only one election may be held pursuant to the provisions of this article.

§18-7C-10. Qualified domestic relations orders.

Any member having a qualified domestic relations order against his or her defined contribution account is allowed to repurchase service in the State Teachers Retirement System. The member shall repay any moneys previously distributed to the alternate payee along with the interest as set by the board. The member shall repay by the last day of June, two thousand twelve. The provisions of this section are void and of no effect if the members fail to elect to merge and consolidate the Defined Contribution Retirement System with the State Teachers Retirement System.

§18-7C-11. Vesting.

Any member who works one hour or more after the date of merger occurs is subject to the vesting schedule set forth in article seven-a of this chapter: Provided, That if a member is vested under the Defined Contribution Retirement System and his or her last contribution was not made to the State Teachers Retirement System, that member is subject to the vesting schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

(a) Any member of the Defined Contribution Retirement System who has made a contribution to the State Teachers Retirement System after the date of merger is guaranteed a minimum benefit equal to his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Defined Contribution Retirement System as of the thirtieth day of June, two thousand six, plus any earnings thereon, as stated by the board or the board’s professional contractor.
(b) A member of the Defined Contribution Retirement System who has made contributions to the State Teachers Retirement System after the thirtieth day of June, two thousand six, where the Defined Contribution Retirement System has been merged into the State Teachers Retirement System, upon eligibility to receive a distribution under article seven-a of this chapter, shall have at a minimum the following three options:

(1) The right to receive an annuity from the State Teachers Retirement System based upon the provisions of article seven-a of this chapter;

(2) The right to withdraw from the State Teachers Retirement System and receive his or her member accumulated contributions in the State Teachers Retirement System, plus regular interest thereon, as set forth in article seven-a of this chapter; or

(3) The right to withdraw and receive his or her member contributions plus the vested portion of employer contributions made on his or her behalf to the Defined Contribution Retirement System, plus any earnings thereon as of the date of the merger, as determined by the board or its professional third-party benefits administrator pursuant to the vesting provisions of section twelve of this article. This amount may be distributed in a lump sum or in periodic payments as elected by the member.

(c) Any member of the Defined Contribution Retirement System who makes no contribution to the State Teachers Retirement System following approval of the merger and following the date of merger is guaranteed the receipt of the amount in his or her total vested account in the Defined Contribution Retirement System on the date of merger, plus interest thereon, at four percent accruing from the date of merger. This amount may be distributed in a lump sum or in periodic payments as elected by the member.

§18-7C-13. Due process and right to appeal.
Any person aggrieved by any determination made by the board following the election, if the result of the election is in favor of merger and consolidation, may petition the board and receive an administrative hearing on the matter in dispute. The administrative decision may be appealed to a circuit court.

CHAPTER 19

(S. B. 4008 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed September 13, 2005; in effect from passage.]
[Approved by the Governor on September 30, 2005.]

AN ACT to amend and reenact §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to salaries for teachers and school service personnel; adopting state minimum salary schedules for teachers; providing for incremental salary increases for teachers; and providing minimum pay grade scales for school service personnel.

Be it enacted by the Legislature of West Virginia:

That §18A-4-2 and §18A-4-8a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.
§18A-4-8a. Service personnel minimum monthly salaries.

§18A-4-2. State minimum salaries for teachers.

(a) Each teacher shall receive the amount prescribed in the 2005-06 State Minimum Salary Schedule I as set forth in this
section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year: Provided, That beginning on the first day of the second quarter of the teacher’s employment term in the school year two thousand five-two thousand six through the thirtieth day of June, two thousand six, each teacher shall receive the amount prescribed in the 2005-06 State Minimum Salary Schedule II as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year: Provided, however, That any salary increase that a teacher is entitled to receive as a result of the enactment of the 2005-06 State Minimum Salary Schedule II shall not be paid until the first pay date after the first day of November, two thousand five.

Effective the first day of July, two thousand six, through the thirtieth day of June, two thousand seven, each teacher shall receive the amount prescribed in the 2006-07 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

Effective the first day of July, two thousand seven, through the thirtieth day of June, two thousand eight, each teacher shall receive the amount prescribed in the 2007-08 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

Effective the first day of July, two thousand eight, and thereafter, each teacher shall receive the amount prescribed in the 2008-09 State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section
or article and any county supplement in effect in a county pursuant to section five-a of this article during the contract year.

### 2005-06 STATE MINIMUM SALARY SCHEDULE I

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## TEACHERS SALARIES

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### 2008-09 State Minimum Salary Schedule

<table>
<thead>
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<th>Years</th>
<th>4th Exp.</th>
<th>3rd Class</th>
<th>2nd Class</th>
<th>A.B.</th>
<th>M.A. +15</th>
<th>M.A.</th>
<th>M.A. +30</th>
<th>M.A. +45</th>
<th>Doc. Torate</th>
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<tbody>
<tr>
<td>0</td>
<td>23,238</td>
<td>23,875</td>
<td>24,130</td>
<td>25,340</td>
<td>26,075</td>
<td>27,783</td>
<td>28,518</td>
<td>29,253</td>
<td>29,988</td>
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<tr>
<td>1</td>
<td>23,555</td>
<td>24,192</td>
<td>24,447</td>
<td>25,841</td>
<td>26,576</td>
<td>28,284</td>
<td>29,019</td>
<td>29,754</td>
<td>30,489</td>
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2007-08 State Minimum Salary Schedule

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<th>Years</th>
<th>4th Exp.</th>
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<th>2nd Class</th>
<th>A.B.</th>
<th>M.A. +15</th>
<th>M.A.</th>
<th>M.A. +30</th>
<th>M.A. +45</th>
<th>Doc. Torate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>23,238</td>
<td>23,875</td>
<td>24,130</td>
<td>25,340</td>
<td>26,075</td>
<td>27,783</td>
<td>28,518</td>
<td>29,253</td>
<td>29,988</td>
</tr>
<tr>
<td>1</td>
<td>23,555</td>
<td>24,192</td>
<td>24,447</td>
<td>25,841</td>
<td>26,576</td>
<td>28,284</td>
<td>29,019</td>
<td>29,754</td>
<td>30,489</td>
</tr>
</tbody>
</table>
(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least twenty years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable state minimum salary schedule; (ii) shall be paid in equal monthly installments; and
(iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective the first day of July, two thousand five, through the thirtieth day of June, two thousand eight, in addition to any amounts prescribed in the applicable state minimum salary schedule, each professional educator shall be paid annually the following incremental increases in accordance with their years of experience. The payments shall be paid in equal monthly installments and shall be considered a part of the state minimum salaries for teachers.

<table>
<thead>
<tr>
<th>Years of Experience</th>
<th>Increment</th>
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<td>30</td>
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<td>34</td>
<td>570</td>
</tr>
<tr>
<td>35</td>
<td>570</td>
</tr>
</tbody>
</table>

(d) Effective the first day of July, two thousand eight, the incremental increases prescribed in subsection (c) of this section are included as a part of the 2008-09 State Minimum Salary Schedule, therefore, the additional incremental increases prescribed in said subsection are discontinued.

§18A-4-8a. Service personnel minimum monthly salaries.

(1) The minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade I set forth in this section: Provided, That
beginning on the first day of the second quarter of the service employee’s employment term in the school year two thousand five-two thousand six, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade II set forth in this section: Provided, however, That any salary increase that a service employee is entitled to receive as a result of the enactment of the State Minimum Pay Scale Pay Grade II shall not be paid until the first pay date after the first day of November, two thousand five.

**STATE MINIMUM PAY SCALE PAY GRADE I**

<table>
<thead>
<tr>
<th>Years of Employment</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
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<td>1,426</td>
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<td>1,779</td>
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<td>1,960</td>
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<td>2,050</td>
<td>2,120</td>
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<td>1,891</td>
<td>1,941</td>
<td>1,991</td>
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<td>2,081</td>
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<td>1,972</td>
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<td>2,082</td>
<td>2,112</td>
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### Teachers Salaries

| 17 | 1,893 | 1,913 | 1,953 | 2,003 | 2,053 | 2,113 | 2,143 | 2,213 |
| 18 | 1,924 | 1,944 | 1,984 | 2,034 | 2,084 | 2,144 | 2,174 | 2,244 |
| 19 | 1,955 | 1,975 | 2,015 | 2,065 | 2,115 | 2,175 | 2,205 | 2,275 |
| 20 | 1,986 | 2,006 | 2,046 | 2,096 | 2,146 | 2,206 | 2,236 | 2,306 |
| 21 | 2,017 | 2,037 | 2,077 | 2,127 | 2,177 | 2,237 | 2,267 | 2,337 |
| 22 | 2,048 | 2,068 | 2,108 | 2,158 | 2,208 | 2,268 | 2,298 | 2,368 |
| 23 | 2,079 | 2,099 | 2,139 | 2,189 | 2,239 | 2,299 | 2,329 | 2,399 |
| 24 | 2,110 | 2,130 | 2,170 | 2,220 | 2,270 | 2,330 | 2,360 | 2,430 |
| 25 | 2,141 | 2,161 | 2,201 | 2,251 | 2,301 | 2,361 | 2,391 | 2,461 |
| 26 | 2,172 | 2,192 | 2,232 | 2,282 | 2,332 | 2,392 | 2,422 | 2,492 |
| 27 | 2,203 | 2,223 | 2,263 | 2,313 | 2,363 | 2,423 | 2,453 | 2,523 |
| 28 | 2,234 | 2,254 | 2,294 | 2,344 | 2,394 | 2,454 | 2,484 | 2,554 |
| 29 | 2,265 | 2,285 | 2,325 | 2,375 | 2,425 | 2,485 | 2,515 | 2,585 |
| 30 | 2,296 | 2,316 | 2,356 | 2,406 | 2,456 | 2,516 | 2,546 | 2,616 |
| 31 | 2,327 | 2,347 | 2,387 | 2,437 | 2,487 | 2,547 | 2,577 | 2,647 |
| 32 | 2,358 | 2,378 | 2,418 | 2,468 | 2,518 | 2,578 | 2,608 | 2,678 |
| 33 | 2,389 | 2,409 | 2,449 | 2,499 | 2,549 | 2,609 | 2,639 | 2,709 |
| 34 | 2,420 | 2,440 | 2,480 | 2,530 | 2,580 | 2,640 | 2,670 | 2,740 |
| 35 | 2,451 | 2,471 | 2,511 | 2,561 | 2,611 | 2,671 | 2,701 | 2,771 |
| 36 | 2,482 | 2,502 | 2,542 | 2,592 | 2,642 | 2,702 | 2,732 | 2,802 |
| 37 | 2,513 | 2,533 | 2,573 | 2,623 | 2,673 | 2,733 | 2,763 | 2,833 |
| 38 | 2,544 | 2,564 | 2,604 | 2,654 | 2,704 | 2,764 | 2,794 | 2,864 |
| 39 | 2,575 | 2,595 | 2,635 | 2,685 | 2,735 | 2,795 | 2,825 | 2,895 |
| 40 | 2,606 | 2,626 | 2,666 | 2,716 | 2,766 | 2,826 | 2,856 | 2,926 |

### State Minimum Pay Scale Pay Grade II

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<tr>
<td>25</td>
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<td>Auditor</td>
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<td>Autism Mentor</td>
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<tr>
<td>35</td>
<td>Braille or Sign Language Specialist</td>
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<td>36</td>
<td>Bus Operator</td>
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<td>37</td>
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<td>Cabinetmaker</td>
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<td>43</td>
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<td>Computer Operator</td>
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<td>Cook II</td>
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<td>48</td>
<td>Cook III</td>
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<td>Custodian III</td>
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<td>Custodian IV</td>
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<td>Director or Coordinator of Services</td>
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<td>Draftsman</td>
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<tr>
<td>56</td>
<td>Electrician I</td>
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<tr>
<td>57</td>
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<td>Electronic Technician I</td>
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<tr>
<td>60</td>
<td>Executive Secretary</td>
</tr>
<tr>
<td>61</td>
<td>Food Services Supervisor</td>
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</table>
62 Foreman G
63 General Maintenance C
64 Glazier D
65 Graphic Artist D
66 Groundsman B
67 Handyman B
68 Heating and Air Conditioning Mechanic I E
69 Heating and Air Conditioning Mechanic II G
70 Heavy Equipment Operator E
71 Inventory Supervisor D
72 Key Punch Operator B
73 Locksmith G
74 Lubrication Man C
75 Machinist F
76 Mail Clerk D
77 Maintenance Clerk C
78 Mason G
79 Mechanic F
80 Mechanic Assistant E
81 Office Equipment Repairman I F
82 Office Equipment Repairman II G
83 Painter E
84 Paraprofessional F
85 Payroll Supervisor G
86 Plumber I E
87 Plumber II G
88 Printing Operator B
89 Printing Supervisor D
90 Programmer H
91 Roofing/Sheet Metal Mechanic F
92 Sanitation Plant Operator F
93 School Bus Supervisor E
94 Secretary I D
95 Secretary II E
96 Secretary III F
97 Supervisor of Maintenance H
(2) An additional twelve dollars per month shall be added to the minimum monthly pay of each service employee who holds a high school diploma or its equivalent.

(3) Until the first day of July, two thousand two, an additional ten dollars per month also shall be added to the minimum monthly pay of each service employee for each of the following, and beginning the first day of July, two thousand two, the ten dollars per month shall be increased to an additional eleven dollars per month for each of subdivisions (A) through (J), inclusive, of this subsection only and beginning the first day of July, two thousand two, the ten dollars per month shall be increased to an additional forty dollars per month for each of subdivisions (K) through (N), inclusive, of this subsection only:

(A) A service employee who holds twelve college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(B) A service employee who holds twenty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(C) A service employee who holds thirty-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;
(D) A service employee who holds forty-eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(E) A service employee who holds sixty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(F) A service employee who holds seventy-two college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(G) A service employee who holds eighty-four college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(H) A service employee who holds ninety-six college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(I) A service employee who holds one hundred eight college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(J) A service employee who holds one hundred twenty college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(K) A service employee who holds an associate’s degree;

(L) A service employee who holds a bachelor’s degree;

(M) A service employee who holds a master’s degree;

(N) A service employee who holds a doctorate degree.

(4) Effective the first day of July, two thousand two, an additional eleven dollars per month shall be added to the
minimum monthly pay of each service employee for each of
the following:

(A) A service employee who holds a bachelor’s degree
plus fifteen college hours;

(B) A service employee who holds a master’s degree plus
fifteen college hours;

(C) A service employee who holds a master’s degree plus
thirty college hours;

(D) A service employee who holds a master’s degree plus
forty-five college hours; and

(E) A service employee who holds a master’s degree plus
sixty college hours.

(5) When any part of a school service employee’s daily
shift of work is performed between the hours of six o’clock
p.m. and five o’clock a.m. the following day, the employee
shall be paid no less than an additional ten dollars per month
and one half of the pay shall be paid with local funds.

(6) Any service employee required to work on any legal
school holiday shall be paid at a rate one and one-half times
the employee’s usual hourly rate.

(7) Any full-time service personnel required to work in
excess of their normal working day during any week which
contains a school holiday for which they are paid shall be paid
for the additional hours or fraction of the additional hours at a
rate of one and one-half times their usual hourly rate and paid
entirely from county board funds.

(8) No service employee may have his or her daily work
schedule changed during the school year without the em-
employee’s written consent and the employee’s required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(9) The minimum hourly rate of pay for extra duty assignments as defined in section eight-b of this article shall be no less than one seventh of the employee’s daily total salary for each hour the employee is involved in performing the assignment and paid entirely from local funds: Provided, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be utilized if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time employees within that classification category of employment within that county: Provided, however, That the vote shall be by secret ballot if requested by a service personnel employee within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment shall be prorated accordingly. When performing extra duty assignments, employees who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the employee were employed on a full-day salary basis.

(10) The minimum pay for any service personnel employees engaged in the removal of asbestos material or related duties required for asbestos removal shall be their regular total daily rate of pay and no less than an additional three dollars per hour or no less than five dollars per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos decontamination of the work site, placing
and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos related duties outside of the employee’s regular employment county, the daily rate of pay shall be no less than the minimum amount as established in the employee’s regular employment county for asbestos removal and an additional thirty dollars per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel employees may be utilized in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(11) For the purpose of qualifying for additional pay as provided in section eight, article five of this chapter, an aide shall be considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort or render service to a child or children when not under the direct supervision of certificated professional personnel within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds or wherever supervision is required. For purposes of this section, “under the direct supervision of certificated professional personnel” means that certificated professional personnel is present, with and accompanying the aide.
AN ACT to amend and reenact §21A-1A-17 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21A-5-10c, all relating to unemployment compensation generally; placing a limit on the amount of wages an election official can receive in a calendar year that is not considered employment wages for unemployment compensation purposes; preventing State Unemployment Tax Act (SUTA) dumping, a method to circumvent the paying of proper unemployment compensation taxes; and imposing criminal and civil penalties, including penalty rates, for dumping violations.

Be it enacted by the Legislature of West Virginia:

That §21A-1A-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 section, designated §21A-5-10c, all to read as follows:

Article
1A. Definitions.
5. Employer Coverage and Responsibility.

ARTICLE 1A. DEFINITIONS.

§21A-1A-17. Exclusions from employment.

1 The term “employment” does not include:
(1) Service performed in the employ of the United States or any instrumentality of the United States exempt under the Constitution of the United States from the payments imposed by this law, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this law are applicable to the instrumentalities and to service performed for the instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state is not certified for any year by the Secretary of Labor under 26 U.S.C. §3404, subsection (c), the payments required of the instrumentalities with respect to the year shall be refunded by the commissioner from the fund in the same manner and within the same period as is provided in section nineteen, article five of this chapter with respect to payments erroneously collected;

(2) Service performed with respect to which unemployment compensation is payable under the Railroad Unemployment Insurance Act and service with respect to which unemployment benefits are payable under an unemployment compensation system for maritime employees established by an act of Congress. The Commissioner may enter into agreements with the proper agency established under an act of Congress to provide reciprocal treatment to individuals who, after acquiring potential rights to unemployment compensation under an Act of Congress or who have, after acquiring potential rights to unemployment compensation under an act of Congress, acquired rights to benefit under this chapter. Such agreement shall become effective ten days after the publications which shall comply with the general rules of the Department;

(3) Service performed by an individual in agricultural labor, except as provided in subdivision (12), section sixteen of this article, the definition of “employment.” For purposes of this
subdivision, the term “agricultural labor” includes all services performed:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife;

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section fifteen (g) of the Agricultural Marketing Act, as amended, as codified in 12 U.S.C. §1141j, subsection (g), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one half of the commodity with respect to which the service is performed; or (ii) in the employ of a group of operators of farms (or a cooperative organization of which the operators are members) in the performance of service described in subparagraph (i) of this paragraph, but only if the operators produced more than one half of the commodity
(E) On a farm operated for profit if the service is not in the course of the employer’s trade or business or is domestic service in a private home of the employer. As used in this subdivision, the term “farm” includes stock, dairy, poultry, fruit, fur-bearing animals, truck farms, plantations, ranches, greenhouses, ranges and nurseries, or other similar land areas or structures used primarily for the raising of any agricultural or horticultural commodities;

(4) Domestic service in a private home except as provided in subdivision (13), section sixteen of this article, the definition of “employment”;

(5) Service performed by an individual in the employ of his or her son, daughter or spouse;

(6) Service performed by a child under the age of eighteen years in the employ of his or her father or mother;

(7) Service as an officer or member of a crew of an American vessel, performed on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state;

(8) Service performed by agents of mutual fund broker-dealers or insurance companies, exclusive of industrial insurance agents, or by agents of investment companies, who are compensated wholly on a commission basis;
Service performed: (A) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches; or (B) by a duly ordained, commissioned or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order; or (C) by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of either: (i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or (ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market: Provided, That this exemption does not apply to services performed by individuals if they are not receiving rehabilitation or remunerative work on account of their impaired capacity; or (D) as part of an unemployment work-relief or work-training program assisted or financed, in whole or in part, by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving the work relief or work training; or (E) by an inmate of a custodial or penal institution;

Service performed in the employ of a school, college or university, if the service is performed: (A) By a student who is enrolled and is regularly attending classes at the school, college or university; or (B) by the spouse of a student, if the spouse is advised, at the time the spouse commences to perform the service, that: (i) The employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college or university; and (ii) the employment will not be covered by any program of unemployment insurance;
(11) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at the institution, which combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, except that this subdivision does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(12) Service performed in the employ of a hospital, if the service is performed by a patient of the hospital, as defined in this article;

(13) Service in the employ of a governmental entity referred to in subdivision (9), section sixteen of this article, the definition of “employment,” if the service is performed by an individual in the exercise of duties: (A) As an elected official; (B) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision; (C) as a member of the state national guard or air national guard, except as provided in section twenty-eight of this article; (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (E) in a position which, under or pursuant to the laws of this state, is designated as: (i) A major nontenured policymaking or advisory position; or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week; or (F) as any election official appointed to serve during any municipal, county or state election, if the amount of remuneration received by the individual during the calendar year for services as an election official is less than one thousand dollars;
(14) Service performed by a bona fide partner of a partnership for the partnership; and

(15) Service performed by a person for his or her own sole proprietorship.

Notwithstanding the foregoing exclusions from the definition of “employment,” services, except agricultural labor and domestic service in a private home, are in employment if with respect to the services a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a State Unemployment Compensation Fund, or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are required to be covered under this chapter.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10c. Special rules regarding transfers of experience and assignment of rates.

Notwithstanding any other provision of law to the contrary, the following shall apply regarding assignment of rates and transfers of experience:

(a) (1) If an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer of trade or business. The transfer of some or all of an employer’s workforce to another employer shall be considered a transfer of trade or business when, as a result of such transfer, the transferring employer no longer performs the trade or business with
respect to the transferred workforce, and such trade or business
is performed by the employer to whom the workforce is
transferred.

(2) If, following a transfer of experience under paragraph
(1) of this section, the Commissioner determines that a substanta-
tional purpose of the transfer of trade or business was to obtain a
reduced liability for contributions, then the experience rating
accounts of the employers involved shall be combined into a
single account and a single rate assigned to such account.

(b) Whenever a person who is not an employer, as defined
in section fifteen, article one-a of this chapter, at the time it
acquires the trade or business of an employer, the unemploy-
ment experience of the acquired business shall not be trans-
ferred to such person if the Commissioner or his or her repre-
sentative finds that such person acquired the business solely or
primarily for the purpose of obtaining a lower rate of contribu-
tions. Instead, such person shall be assigned the applicable new
employer rate under section five of this article. In determining
whether the business was acquired solely or primarily for the
purpose of obtaining a lower rate of contributions, the Commis-
sioner or his or her representative shall use objective factors
which may include the cost of acquiring the business, whether
the person continued the business enterprise of the acquired
business, how long such business enterprise was continued, or
whether a substantial number of new employees were hired for
performance of duties unrelated to the business activity
conducted prior to acquisition.

(c) (1) If a person knowingly violates or attempts to violate
subsection (a) or (b) of this section or any other provision of
this chapter related to determining the assignment of a contribu-
tion rate, or if a person knowingly advises another person in a
way that results in a violation of such provision, the person
shall be subject to the following penalties:
(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the person’s business is already at the highest rate for any year, or if the amount of increase in the person’s rate would be less than two percent for that year, then a penalty rate of contributions of two percent of taxable wages shall be imposed for that year.

(B) If the person is not an employer, that person shall be subject to a civil money penalty of not more than five thousand dollars. Any fine collected pursuant to this paragraph shall be deposited in the Special Administrative Fund Account established under section five-a, article nine of this chapter.

(2) For purposes of this section, the term “knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this section, the term “violates or attempts to violate” includes, but is not limited to, intent to evade, misrepresentation or willful nondisclosure.

(4) In addition to the penalty imposed by paragraph (1) of this subsection, any violation of this chapter may be prosecuted as a misdemeanor under section ten, article ten of this chapter.

(d) The Commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(e) For purposes of this section:

(1) “Person” has the meaning given such term by section 7701(a)(1) of the Internal Revenue Code of 1986; and
(2) "Trade or business" shall include the employer's workforce.

(f) This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor in effect at the time this section becomes law.

CHAPTER 21

(Com. Sub. for H. B. 412 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed September 12, 2005; in effect from passage] [Approved by the Governor on September 30, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §23-2C-24; and to amend and reenact §23-2D-4 of said code, all relating generally to Workers' Compensation; authorizing the Governor to condition the transfer of certain funds to the New Fund administered by the successor to the Workers’ Compensation Commission upon repayment of the funds under surplus note or other loan arrangement; allowing additional flexibility in terms and method for issuance of Workers’ Compensation debt reduction revenue bonds; and allowing use of derivative products to reduce debt service costs and manage interest rate exposure.

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 §23-2C-24; and that
§23-2D-4 of said code be amended and reenacted, all to read as follows:

Article

2C. Employers’ Mutual Insurance Company.

2D. Workers’ Compensation Debt Reduction Bonds.

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.

§23-2C-24. Surplus note or other loan arrangement for new fund.

(a) Notwithstanding any other provision of this article to the contrary, the transfer of all or a portion of the remainder of funds to be disbursed into the new fund as provided subsection (b), section six of this article, in such amount as may be determined by the Governor, may be conditioned upon the repayment thereof and subject to the terms of a surplus note or other loan arrangement. The Governor shall specify the amount that is to be transferred to the new fund conditioned upon the repayment thereof and subject to loan arrangement in the proclamation issued pursuant to section eleven of this article. The terms of any such surplus note or other loan arrangement must be approved by the Insurance Commissioner before execution of the said proclamation.

(b) Payments received by the Treasurer from the company in repayment of any outstanding surplus note or other loan arrangement made pursuant to this subsection shall be deposited in the treasury of the state to the credit of the old fund.

(c) The Insurance Commissioner may enter into such agreements, including loan arrangements, with the company that are necessary to accomplish the transfers addressed in this article.

ARTICLE 2D. WORKERS’ COMPENSATION DEBT REDUCTION BONDS.

§23-2D-4. Workers’ Compensation debt reduction revenue bonds; amount; when may issue.
(a) Revenue bonds of the State of West Virginia are hereby authorized to be issued and sold by the West Virginia Economic Development Authority created and provided in article fifteen, chapter thirty-one of this code, solely for the paying down and elimination of the current unfunded liability of the Workers' Compensation Fund, as provided by the Constitution and the provisions of this article. The principal of, and the interest and redemption premium, if any, on the bonds shall be payable solely from the special fund provided in section six of this article for repayment.

(b) The West Virginia Economic Development Authority either in the resolution authorizing the issuance of the bonds or by the execution and delivery by the West Virginia Economic Development Authority of a trust indenture or agreement, shall stipulate the form of the bonds, whether the bonds are to be issued in one or more series, the date or dates of issue, the time or times of maturity, the rate or rates of interest payable on the bonds, which may be at fixed rates or variable rates and which interest may be current interest or may accrue, the denomination or denominations in which the bonds are issued, the conversion or registration privileges applicable to some or all of the bonds, the sources and medium of payment and place or places of payment, the terms of redemption, any privileges of exchangeability or interchangeability applicable to the bonds, and the entitlement of holders of the bonds and the providers of any agreements provided in subsection (e) of this section to priorities of payment or security in the amounts deposited in the West Virginia Workers' Compensation Debt Reduction Revenue Bond Debt Service Fund: Provided, That in no event may the amount of bonds issued pursuant to this article exceed one billion five hundred million dollars: Provided, however, that the terms of the bonds shall not exceed thirty years from their respective issuance dates.
(c) Revenue bonds issued under this article shall state on their face that the bonds do not constitute a debt of the State of West Virginia; that payment of the bonds, interest and charges thereon cannot become an obligation of the State of West Virginia; and that the bondholders’ remedies are limited in all respects to the “special revenue fund” established in this article for the liquidation of the bonds.

(d) Net proceeds from sale of these bonds shall be deposited in the Old Fund.

(e) In addition and not in limitation to the other provisions of this section, in connection with any bonds issued or expected to be issued pursuant to this article, the West Virginia Economic Development Authority may enter into: (i) Commitments to purchase or sell bonds and bond purchase or sale agreements; (ii) agreements providing for credit enhancement or liquidity, including revolving credit agreements, agreements establishing lines of credit or letters of credit, insurance contracts, surety bonds and reimbursement agreements; (iii) agreements to manage interest rate exposure and tax risk and the return on investments, including interest rate exchange agreements, interest rate cap, collar, corridor, ceiling and floor agreements, option, rate spread or similar exposure agreements, float agreements and forward agreements; (iv) stock exchange listing agreements; and (v) any other commitments, contracts or agreements approved by the West Virginia Economic Development Authority: Provided, That the provider or providers of any of the agreements set forth above may be granted the same security and lien privileges as the bondholders and upon execution of such agreements will constitute a contract between the West Virginia Economic Development Authority and the provider or providers.

Be it enacted by the Legislature of West Virginia:
That §23-2C-1, §23-2C-2, §23-2C-4, §23-2C-7, §23-2C-8, §23-2C-15, §23-2C-16 and §23-2C-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 §23-2C-3a; and that §23-4B-1, §23-4B-2, §23-4B-3, §23-4B-4, §23-4B-5, §23-4B-7 and §23-4B-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.
§23-2C-4. Governance and organization.

§23-2C-1. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a long-term actuarial funding crisis in the state-run monopolistic workers’ compensation system;

3 (2) Similar short-term and long-term crises have been ongoing during the past two decades;

4 (3) During the current crisis, employers in West Virginia find it increasingly difficult to afford the rates charged by the Workers’ Compensation Commission for workers’ compensation coverage and that paying said rates adversely impacts employers’ ability to compete in a global economic environment;
(4) The cost of obtaining workers’ compensation coverage from the state system may result in many employers leaving the state;

(5) Employers’ access to competitive workers’ compensation rates and the resulting economic development benefit is of utmost importance to the citizens of West Virginia;

(6) A mechanism is needed to provide an enduring solution to this recurring workers’ compensation crisis;

(7) An employers’ mutual insurance company or a similar entity has proven to be a successful mechanism in other states for helping employers secure insurance and for stabilizing the insurance market;

(8) There is a substantial public interest in creating a method to provide a stable workers’ compensation insurance market in this state;

(9) The state-run workers’ compensation program is a substantial actual and potential liability to the state;

(10) There is substantial public benefit in transferring certain actual and potential future liability of the state to the private sector and creating a stable self-sufficient entity which will be a potential source of workers’ compensation coverage for employers in this state;

(11) A stable, financially viable insurer in the private sector will aid in providing a continuing source of insurance funds to compensate injured workers; and

(12) Because the public will greatly benefit from the formation of an employers’ mutual insurance company, state efforts to encourage and support the formation of such an entity, including providing funding for the entity’s initial capital, is in the clear public interest.
(b) The purpose of this article is to create a mechanism for the formation of an employers’ mutual insurance company that will provide:

(1) A means for employers to obtain workers’ compensation insurance that is reasonably available and affordable; and

(2) Compensation to employees of mutual policyholders who suffer workplace injuries as defined in this chapter.

(c) The further purpose of this article is to transfer New Fund assets relating to the workers’ compensation insurance business to the company, including a reasonable level of policyholder surplus, and for the company to assume the New Fund liabilities related to the transferred assets. It is the intent of this article to provide for the initial capitalization of the company to comply with and to meet the requirements of section 351 and related sections of the Internal Revenue Code.


(a) “Executive director” means the Executive Director of the West Virginia Workers’ Compensation Commission as provided in section one-b, article one of this chapter.

(b) “Commission” means the West Virginia Workers’ Compensation Commission as provided by section one, article one of this chapter.

(c) “Insurance Commissioner” means the Insurance Commissioner of West Virginia as provided in section one, article two, chapter thirty-three of this code.

(d) “Company” or “successor to the commission” means the employers’ mutual insurance company created pursuant to the terms of this article.
(e) “Policy default” shall mean a policyholder that has failed to comply with the terms of its workers’ compensation insurance policy and is consequently without workers’ compensation insurance coverage.

(f) “Industrial insurance” means insurance which provides all compensation and benefits required by this chapter.

(g) “Insurer” includes:

1. A self-insured employer; and
2. A private carrier.

(h) “Industrial Council” means the advisory group established in section five of this article.

(i) “Mutualization Transition Fund” shall be a fund over which the State Treasurer is custodian. Moneys transferred or otherwise payable to the Mutualization Transition Fund shall be deposited in the State Treasury to the credit of the Mutualization Transition Fund. Disbursements shall be made from the Mutualization Transition Fund upon requisitions signed by the executive director, and, upon termination of the commission, the Insurance Commissioner, and shall be reasonably related to the legal, operational, consultative and human resource-related expenses associated with the establishment of the company and the transferring of personnel from the commission to the company.

(j) “New Fund” shall mean a fund owned and operated by the commission and, upon termination of the commission, the successor organization of the West Virginia Workers’ Compensation Commission and shall consist of those funds transferred to it from the Workers’ Compensation Fund and any other applicable funds. New Fund shall include all moneys due and payable to the Workers’ Compensation Fund for the quarters
ending the thirtieth day of September, two thousand five, and
the thirty-first day of December, two thousand five, which have
not been collected by the Workers’ Compensation Fund as of
the thirty-first day of December, two thousand five.

(k) “New Fund liabilities” shall mean all claims payment
obligations (indemnity and medical expenses) for all claims,
actual and incurred but not reported, for any claim with a date
of injury or last exposure on or after the first day of July, two
thousand five: Provided, That New Fund liabilities shall begin
with claims payments becoming due and owing on said claims
on or after the first day of January, two thousand six.

(l) “Old Fund” shall mean a fund held by the State Treas-
urer’s office consisting of those funds transferred to it from the
Workers’ Compensation Fund or other sources and those funds
due and owing the Workers’ Compensation Fund as of the
thirtieth day of June, two thousand five, that are thereafter
collected. The Old Fund and assets therein shall remain
property of the state and shall not novate or otherwise transfer
to the company.

(m) “Old Fund liabilities” mean all claims payment
obligations (indemnity and medical expenses), related liabilities
and appropriate administrative expenses necessary for the
administration of all claims, actual and incurred but not
reported, for any claim with a date of injury or last exposure on
or before the thirtieth day of June, two thousand five: Provided,
That Old Fund liabilities shall include all claims payments for
any claim, regardless of date of injury or last exposure, through
the thirty-first day of December, two thousand five: Provided,
however, That Old Fund liabilities shall include all claims with
dates of injuries or last exposure prior to the first day of July,
two thousand four, for bankrupt self-insured employers that had
defaulted on their claims obligations which have been recog-
nized by the commission in its actuarially determined liability
number as of the thirtieth day of June, two thousand five.
(n) “Private carrier” means any insurer or the legal representative of an insurer authorized by the Insurance Commissioner to provide workers’ compensation insurance pursuant to this chapter and which maintains an office in the state. The term does not include a self-insured employer or private employers but shall include any successor to the commission.

(o) “Uninsured Employer Fund” means a fund held by the State Treasurer’s office consisting of those funds transferred to it from the Workers’ Compensation Fund and any other source. Disbursements from the Uninsured Employer Fund shall be upon requisitions signed by the Insurance Commissioner, and as otherwise set forth in an exempt legislative rule promulgated by the workers’ compensation board of managers.

(p) “Self-Insured Employer Guaranty Risk Pool” shall be a fund held by the State Treasurer’s office consisting of those funds transferred to it from the guaranty pool created pursuant to 85 CSR §19 (2004) and any future funds collected through continued administration of that exempt legislative rule as administered by the Insurance Commissioner. Disbursements shall be made from the Self-Insured Employer Guaranty Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in 85 CSR §19 (2004).

(q) “Self-Insured Employer Security Risk Pool” shall be a fund held by the state’s Treasurer consisting of those funds paid into it through the Insurance Commissioner’s administration of 85 CSR §19 (2004). Disbursement from said fund shall be made from the Self-Insured Employer Security Risk Pool upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in 85 CSR §19: Provided, That said liabilities shall be limited to those self-insured employers who default on their claims obligations after the termination of the commission.
(r) “Private Carrier Guaranty Fund” shall be a fund held by the State Treasurer’s office consisting of funds deposited pursuant to this article. Disbursements shall be made from the Private Carrier Guaranty Fund upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in this article.

(s) “Assigned Risk Fund” shall be a fund held by the State Treasurer’s office consisting of funds deposited pursuant to this article. Disbursements shall be made from the Assigned Risk Fund upon requisitions signed by the Insurance Commissioner. The obligations of the fund shall be as provided in this article.

(t) “Comprehensive financial plan” shall mean the plan compiled by the director for acceptance by the Insurance Commissioner identifying and forecasting cash flows, funding sources, debt terms and structures and scheduled amortization and permanent resolution of all Old Fund liabilities. The comprehensive financial plan shall provide for the retirement of the revenue bonds authorized by article two-d of this chapter and all realized and potential claims against the Old Fund shall be fully reserved. The comprehensive financial plan may include any other information the Insurance Commissioner may require as a basis for managing the post-transition fiscal soundness of the Old Fund.


(a) Notwithstanding any other provisions of this article to the contrary, the employers’ mutual insurance company:

(1) May not be dissolved.

(2) May not transact such other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code prior to the first day of January, two thousand nine.
(b) As soon as practical following the effective date of this section, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its amended articles of incorporation and amended bylaws with the Insurance Commissioner and apply for a license with the Insurance Commissioner to transact insurance in this state. Notwithstanding any other provision of this code, the Insurance Commissioner shall act on the documents within fifteen days of the filing by the company.

(c) Notwithstanding any provision of subsection (g), section three of this article to the contrary, in the event the Governor certifies to the Legislature that revenue bonds issued pursuant to article two-d of this chapter have been retired and that the unfunded liability of the Old Fund has been paid or has been provided for in its entirety, whichever occurs last, then:

(1) The premiums surcharge imposed by subdivision (2), subsection (f), section three of this article shall not sunset and shall continue to be remitted in accordance with the provisions of said subsection; and

(2) The premiums surcharge imposed by subdivision (3), subsection (f), section three of this article shall sunset and not be collectible with respect to workers’ compensation insurance premiums paid when the policy is renewed on or after the first day of the month following the month in which the Governor makes the certification.

(d) Except as may otherwise be provided in this subsection, all provisions of section three of this article shall remain in full force and effect.

§23-2C-4. Governance and organization.

(a) (1) The commission shall implement the initial formation and organization of the company as provided by this article.
(2) From the inception of the company, until the first day of January, two thousand six, the company shall be governed by a provisional board of directors consisting of the three persons on the executive committee of the workers' compensation board of managers and four members of the Legislature. Two members of the West Virginia Senate and two members of the West Virginia House of Delegates shall serve as advisory nonvoting members of the board. The Governor shall appoint the legislative members to the board. No more than three of the legislative members shall be of the same political party. The provisional board shall have the authority to function as necessary to establish the company and cause it to become operational, including the right to contract on behalf of the company. Each voting board member shall receive compensation of not more than three hundred fifty dollars per day and actual and necessary expenses for each day during which he or she is required to and does attend a meeting of the board.

(3) Except as limited by this section and applicable insurance rules and statutes, the company may: (1) On its own; (2) through the formation or acquisition of subsidiaries; or (3) through a joint enterprise, offer:

(A) Workers' compensation insurance in a state other than West Virginia to the extent it also provides workers' compensation or occupational disease insurance coverage to the employer pursuant to this chapter;

(B) Other workers' compensation products and services and related products and services in West Virginia or other states; and

(C) Other property and casualty insurance in West Virginia and other states on or after the first day of January, two thousand nine.

(b) Any election process for the board of directors developed, implemented and overseen by the company's provisional
board prior to the effective date of the amendments to this section enacted during the fifth extraordinary session of the Legislature in two thousand five is nullified and the designation of the company’s initial board of directors shall be governed by the following: Effective the first day of January, two thousand six, the company shall be governed by a board of directors consisting of seven directors, as follows:

(1) Three owners or officers of an entity that has purchased or will immediately upon termination of the commission purchase and maintain an active workers’ compensation insurance policy from the company. At least one shall be a certified public accountant with financial management or pension or insurance audit expertise and at least one shall be an attorney with financial management experience. These three directors shall be appointed by the Governor.

(2) Two directors who have substantial experience as an officer or employee of a company in the insurance industry, one of whom is from a company with less than fifty employees. These two directors shall be appointed by the Governor.

(3) One director with general knowledge and experience in business management who is an officer and employee of the company and is responsible for the daily management of the company.

(4) The chief executive officer of the company.

(c) The initial board of directors appointed by the Governor shall serve from the termination of the commission through the thirty-first day of December, two thousand eight, and may be not removed from that position except for cause.

(d) Any board vacancy that occurs from the termination of the commission through the thirty-first day of December, two thousand eight, shall be filled through appointment by the Governor for the unexpired term.
(e) Upon expiration of the initial terms or upon a vacancy of the board following the thirty-first day of December, two thousand eight, the directors of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company, as amended, which shall provide for the policyholders to nominate and elect future directors. Furthermore, owners, directors or employees of employers otherwise licensed to write workers’ compensation insurance in this state or licensed or otherwise authorized to act as a third-party administrator shall not be eligible to be nominated, appointed, elected or serve on the company’s board of directors.

(f) The Executive Director shall prepare and file amended articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one and thirty-three of this code.

(g) It is the intent of this legislation to create an entity exempt from federal taxation, as provided for in Section 501(c)(27)(B) of the Internal Revenue Code, for as long as the company meets the federal qualification requirements of Section 501(c)(27)(B) of the Internal Revenue Code.


(a) The State Treasurer shall be the custodian of the workers’ compensation Old Fund, workers’ compensation Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk Pool, the Self-Insured Employer Security Risk Pool, the Private Carrier Guaranty Fund and the Assigned Risk Fund and moneys payable to each of these funds shall be deposited in the State Treasury to the credit of the funds. Each fund shall be a separate and distinct fund upon the books and records of the Auditor and Treasurer. Disbursements from these funds shall be made upon requisitions signed by the executive director and, effective upon termination of the commission, the Insurance
Commissioner. The workers’ compensation Old Fund, the workers’ compensation Uninsured Employer Fund, the Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, the Private Carrier Guaranty Fund and the Assigned Risk Fund are participant plans as defined in section two, article six, chapter twelve of this code and are subject to the provisions of section nine-a of said article. The funds may be invested by the Investment Management Board in accordance with said article.

(b) If the Governor issues the proclamation set forth in this article, then, effective upon termination of the commission, all remaining assets and funds contained in the Workers’ Compensation Fund which are payable to the New Fund shall be so disbursed and paid to the company by communication of the executive director to the State Treasurer or other appropriate state official prior to the termination of the commission.


(a) The West Virginia Uninsured Employer Fund shall be governed by the following:

(1) All money and securities in the fund must be held by the State Treasurer as custodian thereof to be used solely as provided in this article.

(2) The State Treasurer may disburse money from the fund only upon written requisition of the Insurance Commissioner.

(3) The Insurance Commissioner shall assess each private carrier and all self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policy holders in the form of a policy surcharge. To establish the amount of the assessment, the Insurance Commissioner shall determine the amount of money necessary to maintain an appropriate balance in the fund for each fiscal
year and shall allocate a portion of that amount to be payable by private carriers, a portion to be payable by self-insured employers and a portion to be paid by any other appropriate group. After allocating the amounts payable, the Insurance Commissioner shall apply an assessment rate to:

(A) Private carriers that reflects the relative hazard of the employments covered by the private carriers, results in an equitable distribution of costs among the private carriers and is based upon expected annual premiums to be received;

(B) Self-insured employers that results in an equitable distribution of costs among the self-insured employers and is based upon expected annual expenditures for claims; and

(C) Any other categories of payees that results in an equitable distribution of costs among them and is based upon expected annual expenditures for claims or premium to be received.

(4) The workers’ compensation board of managers may adopt rules for the establishment and administration of the assessment methodologies, rates, payments and any penalties that the workers’ compensation board of managers determines are necessary to carry out the provisions of this section.

(b) Payments from the fund shall be governed by the following:

(1) Except as otherwise provided in this subsection, an injured worker of any employer required to be covered under this chapter who has failed to obtain coverage may receive compensation from the uninsured employers’ fund if:

(A) He or she meets all jurisdictional and entitlement provisions of this chapter;
(B) He or she files a claim with the Insurance Commissioner; and

(C) He or she makes an irrevocable assignment to the Insurance Commissioner a right to be subrogated to the rights of the injured employee.

(2) If the Insurance Commissioner receives a claim, it shall immediately notify the employer of the claim. For the purposes of this section, the employer has the burden of proving that it provided mandatory workers’ compensation insurance coverage for the employee or that it was not required to maintain workers’ compensation insurance for the employee. If the employer meets this burden, benefits shall not be paid from the fund.

(3) Any employer who has failed to provide mandatory coverage required by the provisions of this chapter is liable for all payments made on its behalf, including any benefits, administrative costs and attorney’s fees paid from the fund or incurred by the Insurance Commissioner.

(4) The Insurance Commissioner:

(A) May recover from the employer the payments made by it, any accrued interest and attorney fees and costs by bringing a civil action in a court of competent jurisdiction.

(B) May enter into a contract with any person, including the third-party administrator of the Uninsured Employer Fund, to assist in the collection of any liability of an uninsured employer.

(C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

(5) The Insurance Commissioner shall:
(A) Determine whether the employer was insured within five days after receiving notice of the claim from the employee.

(B) Assign the claim to the third-party administrator of the fund for administration and, if appropriate, payment of compensation.

(6) Upon determining whether the claim is accepted or denied, the third-party administrator shall notify the injured employee and the named employer of its determination.

(7) Any party aggrieved by a determination made by the Insurance Commissioner or the third-party administrator regarding the claims decisions made pursuant to this section may appeal that determination by filing a protest with the office of judges as set forth in article five of this chapter.

(8) An uninsured employer is liable for the interest on any amount paid on his or her claims from the fund. The interest must be calculated at a rate set in accordance with the provisions of section thirteen, article two of this chapter, compounded monthly, from the date the claim is paid from the account until payment is received by the Insurance Commissioner or third-party administrator from the employer.

(9) Attorney’s fees recoverable by the Insurance Commissioner or third-party administrator pursuant to this section must be paid at the usual and customary rate for that attorney.

(10) In addition to any other liabilities provided in this section, the Insurance Commissioner or the third-party administrator may impose an administrative fine of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by this chapter. All fines and other moneys collected pursuant to this section shall be deposited into the Uninsured Employer Fund.
(c) Employees of self-insured employers who are injured while employed by a self-insured employer are ineligible for benefits from the West Virginia Uninsured Employer Fund.


(a) Effective upon termination of the commission, all subscriber policies with the commission shall novate to the company and all employers otherwise shall purchase workers’ compensation insurance from the company unless permitted to self-insure their obligations. The company shall assume responsibility for all New Fund obligations of the subscriber policies which novate to the company or which are issued thereafter. Each subscriber whose policy novates to the company shall also have its advanced deposit credited to its account with the company. Employers purchasing workers’ compensation insurance from the company shall have the right to designate a representative or agent to act on its behalf in any and all matters relevant to coverage and claims as administered by the company.

(b) Effective the first day of July, two thousand eight, an employer may elect to: (1) Continue to purchase workers’ compensation insurance from the company; (2) purchase workers’ compensation insurance from another private carrier licensed and otherwise authorized to transact workers’ compensation insurance in this state; or (3) self-insure its obligations if it satisfies all requirements of this code to so self-insure and is permitted to do so: Provided, That all state and local governmental bodies, including, but not limited to, all counties and municipalities and their subdivisions and including all boards, colleges, universities and schools, shall continue to purchase workers’ compensation insurance from the company through the thirtieth day of June, two thousand twelve. The company and other private carriers shall be permitted to sell workers’ compensation insurance through licensed agents in the state. To the extent that a private carrier markets workers’ compensation
insurance through a licensed agent, it shall be subject to all applicable provisions of chapter thirty-three of this code. All employers’ must immediately notify the Insurance Commissioner of its private carrier and any change thereto.

(c) An employer may elect to change its private insurer carrier on or after the first day of July, two thousand eight, if the employer has:

(1) Given at least thirty days’ notice to the Insurance Commissioner of the change of insurer; and

(2) Furnished evidence satisfactory to the Insurance Commissioner that the payment of compensation has otherwise been secured.

(d) Each private carrier and employer shall notify the Insurance Commissioner if an employer has changed his or her insurer or has allowed his or her insurance to lapse within twenty-four hours or by the end of the next working day, whichever is later, after the insurer has notice of the change or lapse. Every employer shall post a notice upon its premises in a conspicuous place identifying its industrial insurer. The notice must include the insurer’s name, business address and telephone number and the name, business address and telephone number of its nearest adjuster in this state. The employer shall at all times maintain the notice provided for the information of his or her employees. Release of employer policy information and status by the industrial council and the Insurance Commissioner shall be governed by section four, article one of this chapter. The Insurance Commissioner shall collect and maintain information related to officers, directors and ten percent or more owners of each carrier’s policy holders. The private carrier shall provide said information to the Insurance Commissioner.

(e) Any rule promulgated by the workers’ compensation board of managers empowering agencies of this state to 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 employer whose account is in default with the commission shall be fully enforceable by the Insurance Commissioner against the employer in policy default with a private carrier.

(f) Effective the first day of January, two thousand nine, the company may decline to offer coverage to any applicant. Effective the first day of January, two thousand nine, the company and private carriers may cancel a policy or decline to renew a policy upon the issuance of sixty days’ written advance notice to the policyholder: Provided, That cancellation of the policy by the carrier for failure of consideration to be paid by the policyholder is effective after fifteen days advance written notice of cancellation to the policyholder.


(a) Notwithstanding any provision of this code to the contrary, the company shall be the initial third-party administrator of the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool and Private Carrier Guaranty Fund from the termination of the commission and thereafter for a term of at least six months but not more than three years pursuant to an agreement to be entered into between the Insurance Commissioner and the company prior to the termination of the commission. The company shall be paid a reasonable fee for services provided. The company’s administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer’s office or other applicable state agency and ensuring, through the selection and assignment of counsel, that claims decisions are
properly defended. The administration of said funds thereafter shall be subject to the procedures set forth in article three, chapter five-a of this code.

(b) The Insurance Commissioner shall review claims determined to be payable from said funds and may contest the determination pursuant to the provisions of article five of this chapter.

(c) The Insurance Commissioner may conduct or cause to be conducted an annual audit to be performed on said funds.

(d) The Insurance Commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the Old Fund, including the collection of moneys due the Old Fund and enforcement of repayment agreements entered into for the collection of moneys due on or before the thirtieth day of June, two thousand five, in any administrative proceeding and in any state or federal court.


(a) A self-insured employer shall continue to comply with rules promulgated by the board of managers governing the self-administration of its claims and the successor to the commission shall also comply with the rules promulgated by the board of managers governing the self-administration of claims.

(b) The successor to the commission, any other private carrier and any employer that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the commission in this chapter and provide notices of action taken to effect the purposes of this chapter to provide benefits to persons who have suffered injuries or diseases covered by this chapter. The successor to the commission, private carriers and self-insured employers shall at all times be bound and shall comply fully with all of the provisions
15 of this chapter. Furthermore, all of the provisions contained in
16 article four of this chapter pertaining to disability and death
17 benefits are binding on and shall be strictly adhered to by the
18 successor to the commission, private carriers and the self-
19 insured employer in their administration of claims presented by
20 employees of the self-insured employer.

21 (c) Upon termination of the commission, the Occupational
22 Pneumoconiosis Board shall be transferred to the Insurance
23 Commissioner and shall be administered by the Insurance
24 Commissioner. The company and other private carriers shall
25 have all authority and responsibility granted to the self-insured
26 employers in the administration and processing of occupational
27 pneumoconiosis claims.

28 (d) Upon termination of the commission, all claims
29 allocation responsibilities shall transfer from the commission to
30 the Insurance Commissioner.

31 (e) Upon termination of the commission, the third-party
32 administrator of the Old Fund shall have all administrative and
33 adjudicatory authority vested in the commission in administer-
34 ing old law liabilities and otherwise processing and deciding
35 old law claims.

ARTICLE 4B. COAL-WORKERS’ PNEUMOCONIOSIS FUND.

§23-4B-1. Purpose.
§23-4B-2. Coal-Workers’ Pneumoconiosis Fund established.
§23-4B-3. To whom benefits paid.
§23-4B-4. Who may subscribe.
§23-4B-5. Payment of benefits.
§23-4B-7. Administration.
§23-4B-9. Closure of Coal-Workers’ Pneumoconiosis Fund and coverage provided
by the successor of the commission.

§23-4B-1. Purpose.

1 The purpose of this article is to establish a fund to provide
2 benefits to coal miners who are totally disabled by pneumoconi-
osis and to eligible dependents of coal miners whose deaths
were due to pneumoconiosis or who were totally disabled from
pneumoconiosis at time of their deaths. The further purpose of
this article is to provide a readily available insurer of liability
created by Title IV of the federal Coal Mine Health and Safety
Act of 1969, as amended, for claims incurred under said Act,
including all claims where the date of last exposure is on or
before the thirty-first day of December, two thousand five,
without regard to the date the claim is filed.

§23-4B-2. Coal-Workers’ Pneumoconiosis Fund established.

For the relief of persons who are entitled to receive benefits
by virtue of Title IV of the federal Coal Mine Health and Safety
Act of 1969, as amended, for claims incurred under said Act,
including all claims where the date of last exposure is on or
before the thirty-first day of December, two thousand five,
without regard to the date the claim is filed, there is continued
a fund to be known as the Coal-Workers’ Pneumoconiosis
Fund, which fund shall be separate from the Workers’ Compen-
sation Fund. The Coal-Workers’ Pneumoconiosis Fund shall
consist of premiums and other funds paid to the fund by
employers, subject to the provisions of Title IV of the federal
Coal Mine Health and Safety Act of 1969, as amended, who
shall elect to subscribe to the fund to ensure the payment of
benefits required by the Act for claims incurred under said Act,
including all claims where the date of last exposure is on or
before the thirty-first day of December, two thousand five,
without regard to the date the claim is filed.

The State Treasurer shall be the custodian of the Coal-
Workers’ Pneumoconiosis Fund and all premiums, deposits or
other moneys paid to the fund shall be deposited in the State
Treasury to the credit of the Coal-Workers’ Pneumoconiosis
Fund. Disbursements from the fund shall be made upon
requisition signed by the Executive Director of the Workers’
Compensation Commission to those persons entitled to partici-
Provided, That effective upon the termination of the Workers’ Compensation Commission, disbursement from the Coal-Workers’ Pneumoconiosis Fund shall be made upon requisitions signed by the Insurance Commissioner. The Insurance Commissioner shall collect any unpaid premium and deposit the same in said fund. The West Virginia Investment Management Board may invest any surplus, reserve or other moneys belonging to the Coal-Workers’ Pneumoconiosis Fund in accordance with article six, chapter twelve of this code.

§23-4B-3. To whom benefits paid.

1 Only those classes of persons who are entitled to benefits under Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, for claims incurred under said Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, are eligible to participate in the Coal-Workers’ Pneumoconiosis Fund.

§23-4B-4. Who may subscribe.

1 Only those employers who are subject to the provisions of Title IV of the federal Coal Mine Health and Safety Act of 1969, as amended, may elect to subscribe to the Coal-Workers’ Pneumoconiosis Fund to insure the liability imposed upon such employers under the provisions of Title IV of the Act. Coverage by the Coal-Workers’ Pneumoconiosis Fund will be provided only for claims incurred under the Act, including all claims where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed.

§23-4B-5. Payment of benefits.

1 Upon receipt of an order of compensation issued pursuant to a claim for benefits filed under the provisions of Title IV of
the federal Coal Mine Health and Safety Act of 1969, as
amended, for claims incurred under said Act, including all
claims where the date of last exposure is on or before the thirty-
first day of December, two thousand five, without regard to the
date the claim is filed, the executive director shall disburse the
Coal-Workers’ Pneumoconiosis Fund in the amounts and to the
persons as directed by the order: Provided, That effective upon
the termination of the Workers’ Compensation Commission,
disbursement from the Coal-workers’ Pneumoconiosis Fund
shall be made upon requisitions signed by the Insurance
Commissioner.

§23-4B-7. Administration.

(a) The Coal-Workers’ Pneumoconiosis Fund shall be
administered by the Executive Director of the Workers’
Compensation Commission, who shall employ any employees
necessary to discharge his or her duties and responsibilities
under this article. All payments of salaries and expenses of the
employees and all expenses peculiar to the administration of
this article shall be made by the State Treasurer from the Coal-
Workers’ Pneumoconiosis Fund upon requisitions signed by the
executive director.

(b) Notwithstanding any provision of this code to the
contrary, effective from the termination of the Workers’
Compensation Commission, the Coal-Workers’ Pneumoconio-
sis Fund shall be administered by the Insurance Commissioner,
who shall employ any employees and contract with any parties
necessary to discharge his or her duties and responsibilities
under this article. All payments of salaries and expenses of the
employees and all expenses peculiar to the administration of
this article shall be made by the State Treasurer from the Coal-
Workers’ Pneumoconiosis Fund upon requisitions signed by the
Insurance Commissioner: Provided, That the employers’
mutual insurance company established pursuant to article two-c
of this chapter shall be the administrator of the Coal-Workers’ Pneumoconiosis Fund for a term not to exceed three years following the termination of the Workers’ Compensation Commission pursuant to an agreement to be entered into between the Insurance Commissioner and the Company prior to the termination of the Workers’ Compensation Commission. The Company’s administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer’s office and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. Any contract entered into by the Insurance Commissioner for the administration of the Coal-Workers’ Pneumoconiosis Fund thereafter shall be subject to the procedures set forth in article three, chapter five-a of this code.

§23-4B-9. Closure of Coal-Workers’ Pneumoconiosis Fund and coverage provided by the successor of the commission.

Upon the termination of the commission, the Coal-Workers’ Pneumoconiosis Fund shall close and the company shall offer insurance to provide for the benefits required by this article until at least the thirty-first day of December, two thousand eight. All claims payment obligations, including indemnity benefits, medical benefits, administrative and all other expenses necessary for the administration and defense of claims, where the date of last exposure is on or before the thirty-first day of December, two thousand five, without regard to the date the claim is filed, shall be an obligation of the Coal-Workers’ Pneumoconiosis Fund created in this article and not of the company.
**DISPOSITION OF BILLS ENACTED**

The first column gives the number of the bill and the second column gives the chapter assigned to it.

**Regular Session, 2006**

**HOUSE BILLS**

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Fourth Extraordinary Session, 2005

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Fifth Extraordinary Session, 2005

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