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AN ACT to amend and reenact §21-11-6 of the Code of West Virginia, 1931, as amended, relating to clarifying that contractors must have a state contractors license in order to submit a bid with the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §21-11-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-6. Necessity for license; exemptions.

1 (a) No person may engage in this state in any act as a contractor, or submit a bid to perform work as a contractor, as defined in this article, unless such person holds a license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall
6 engage in contracting in this state unless an officer thereof
7 holds a license issued pursuant to this article.

8 (b) Any person to whom a license has been issued under
9 this article shall keep the license or a copy thereof posted in
10 a conspicuous position at every construction site where work
11 is being done by the contractor. The contractor's license
12 number shall be included in all contracting advertisements
13 and all fully executed and binding contracts. Any person
14 violating the provisions of this subsection shall be subject,
15 after hearing, to a warning, a reprimand, or a fine of not more
16 than two hundred dollars.

17 (c) Except as otherwise provided in this code, the
18 following are exempt from licensure:

19 (1) Work done exclusively by employees of the United
20 States Government, the State of West Virginia, a county,
21 municipality or municipal corporation, and any governmental
22 subdivision or agency thereof;

23 (2) The sale or installation of a finished product, material
24 or article or merchandise which is not actually fabricated into
25 and does not become a permanent fixed part of the structure;

26 (3) Work performed personally by an owner or lessee of
27 real property on property the primary use of which is for
28 agricultural or farming enterprise;

29 (4) A material supplier who renders advice concerning
30 use of products sold and who does not provide construction
31 or installation services;
(5) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees;

(6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer which is not intended for speculative sale or lease;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.
AN ACT to amend and reenact §21-11-14 of the Code of West Virginia, 1931, as amended, relating to granting the West Virginia Contractor Licensing Board the authority to take disciplinary action including assessing a civil penalty against a licensee for failure to satisfy an adverse judgment in favor of a consumer entered by a magistrate or circuit court.

Be it enacted by the Legislature of West Virginia:

That §21-11-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.


(a) The board has the power and authority to impose the following disciplinary actions:

1. Permanently revoke a license;

2. Suspend a license for a specified period;
(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional practice of a licensee;

(5) Impose requirements for remedial professional education to correct deficiencies in the education, training and skill of a licensee;

(6) Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied;

(7) Order a contractor who has been found, after hearing, to have violated any provision of this article or the rules of the board to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit or performance insurance: Provided, That the amount of financial assurance required under this subdivision may not exceed the total of the aggregate amount of the judgments or liens levied against the contractor or the aggregate value of any corrective work ordered by the board or both: Provided, however, That the board may remove this requirement for licensees against whom no complaints have been filed for a period of five continuous years; and

(8) A fine not to exceed one thousand dollars.

(b) No license issued under the provisions of this article may be suspended or revoked without a prior hearing before the board: Provided, That the board may summarily suspend
a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant and immediate danger to the public health and safety.

(c) The board may reinstate the suspended or revoked license of a person if, upon a hearing, the board finds and determines that the person is able to practice with skill and safety.

(d) The board may accept the voluntary surrender of a license: Provided, That the license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within sixty days of the date the disciplinary action is taken. The board shall hear the appeal within thirty days from receipt of notice of appeal in accordance with the provisions of chapter twenty-nine-a of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal that action in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner resides or does business, within thirty days after the date upon which the petitioner received notice of the final order or decision of the board.

(g) The following are causes for disciplinary action:
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61  (1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

64  (2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

67  (3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

70  (4) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

72  (5) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with the person’s operations as a contractor when the person has the capacity to pay or when the person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay or defraud the person to whom the debt is owed;

81  (6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license or in connection with official licensing matters;

84  (7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;
(8) Willfully or deliberately acting in the capacity of a contractor when not licensed or as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer or otherwise dispose of a license or permitting the unauthorized use thereof;

(10) Engaging in any willful, fraudulent or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;

(11) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed;

(12) Knowingly employing a person or persons who do not have the legal right to be employed in the United States;

(13) Failing to execute written contracts prior to performing contracting work in accordance with section ten of this article;

(14) Failing to abide by an order of the board; or

(15) Failing to satisfy a judgment or execution ordered by a magistrate court, circuit court or arbitration board.
(h) In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action may be taken by the board except on the affirmative vote of at least six members thereof. Other than as specifically set out herein, the board has no power or authority to impose or assess damages.

CHAPTER 148

(Com. Sub. for H.B. 2747 - By Delegates Argento, Barker, Laquinta, Manchin, Martin, Perdue, Tucker, Yost, Blair, Porter and Rowan)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-14-1, §21-14-2, §21-14-3, §21-14-4, §21-14-5, §21-14-6, §21-14-7, §21-14-8 and §21-14-9; and to amend said code by adding thereto a new article, designated §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7, §29-3D-8 and §29-3D-9, all relating to regulating plumbers and fire protection workers; definitions; requiring plumbers to be licensed by the Commissioner of Labor; requiring fire protection workers to be licensed by the State Fire Marshal; exemptions from licensure; rule-making authority for the Commissioner of Labor and the State Fire Marshal; providing enforcement procedures; criminal penalties; and providing that no political subdivision of the state may mandate additional licensing requirements.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-14-1, §21-14-2, §21-14-3, §21-14-4, §21-14-5, §21-14-6, §21-14-7, §21-14-8 and §21-14-9; and that said code be amended by adding thereto a new article, designated §29-3D-1, §29-3D-2, §29-3D-3, §29-3D-4, §29-3D-5, §29-3D-6, §29-3D-7, §29-3D-8 and §29-3D-9, all to read as follows:

Chapter 29. Miscellaneous Boards and Commissions.

CHAPTER 21. LABOR.

ARTICLE 14. SUPERVISION OF PLUMBING WORK.

§21-14-1. Declaration of purpose.
§21-14-2. Definitions.
§21-14-3. License required; exemptions.
§21-14-4. Rule-making authority.
§21-14-5. Enforcement.
§21-14-6. Denial, suspension and revocation of license.
§21-14-7. Penalties.
§21-14-8. Inapplicability of local ordinances.

§21-14-1. Declaration of purpose.

The provisions of this article are intended to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform plumbing through licensure by the Commissioner of Labor.
§21-14-2. Definitions.

As used in this article:

(a) "License" means a valid and current license issued by the Commissioner of Labor in accordance with the provisions of this article.

(b) "Journeyman plumber" means a person qualified by at least eight thousand hours of plumbing or related experience and who is competent to instruct and supervise the work of a plumber in training.

(c) "Master plumber" means a person with at least twelve thousand hours of plumbing work experience and who is competent to design plumbing systems, and to instruct and supervise the plumbing work of journeyman plumbers, and plumbers in training.

(d) "Plumber in training" means a person with interest in and an aptitude for performing plumbing work but who alone is not capable of performing plumbing work, and who has fewer than eight thousand hours of plumbing experience.

(e) "Plumbing" means the practice, materials and fixtures utilized within a building in the installation, extension and alteration of all piping, fixtures, water treatment devices, plumbing appliances and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial and institutional facilities; backflow preventers; and public or private water supply systems, as defined by the state building code.
LABOR

§21-14-3. License required; exemptions.

(a) On and after the first day of January, two thousand nine, a person performing or offering to perform plumbing work in this state shall have a license issued by the Commissioner of Labor, in accordance with the provisions of this article.

(b) A person licensed under this article must carry a copy of the license on any job in which plumbing work is being performed.

(c) This article does not apply to:

(1) A person who personally performs plumbing work on a single family dwelling owned or leased by that person or by a member of that person’s immediate family;

(2) A person who performs plumbing at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment;

(3) A person who performs plumbing work while employed by an employer who engages in the business of selling appliances at retail, so long as such plumbing work is performed incidental to the installation or repair of appliances sold by the employer;
(4) A person who, while employed by a public utility or its affiliate, performs plumbing in connection with the furnishing of public utility service;

(5) A person who performs plumbing work while engaging in the business of installing, altering or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or water treatment systems including all associated structures or buildings, sewers or underground utility services;

(6) A person who performs plumbing work while engaged in the installation, extension, dismantling, adjustment, repair, servicing or alteration of a heating ventilation and air conditioning (HVAC) system, air-veyor system, air exhaust system or air handling system;

(7) A person who performs plumbing work at a coal mine that is being actively mined or where coal is being processed; or

(8) A person who performs plumbing work at manufacturing, industrial and natural gas facilities.

§21-14-4. Rule-making authority.

The Commissioner of Labor shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, for the implementation and enforcement of the provisions of this article, which shall provide:
(1) Standards and procedures for issuing and renewing licenses, including classifications of licenses as defined in this article, applications, examinations and qualifications;

(2) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work at the level of the classifications defined in this article and who apply for licensure on or before the first day of July, two thousand nine: Provided, That if a license issued under the authority of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;

(4) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(5) Fees for testing, issuance and renewal of licenses, and other costs necessary to administer the provisions of this article;

(6) Enforcement procedures; and

(7) Any other rules necessary to effectuate the purposes of this article.

§21-14-5. Enforcement.

The Commissioner of Labor and his or her Deputy Commissioner or any compliance officer of the Division of Labor as authorized by the Commissioner of Labor is authorized to enforce the provisions of this article, and may,
§21-14-6. Denial, suspension and revocation of license.

(a) The Commissioner of Labor may deny a license to any applicant who fails to comply with the rules established by the Commissioner of Labor, or who lacks the necessary qualifications.

(b) The Commissioner of Labor may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee’s license if:

1. The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant’s qualifications or experience;

2. The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

3. The licensee incompetently or unsafely performs plumbing work; or

4. The licensee violated any statute of this state, any legislative rule or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful or improper business practices.
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§21-14-7. Penalties.

(a) On and after the first day of January, two thousand nine, a person performing or offering to perform plumbing work without a license issued by the Commissioner of Labor, is subject to a cease and desist order.

(b) Any person continuing to engage in plumbing work after the issuance of a cease and desist order is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For the first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in jail for not less than thirty days nor more than one year.

(c) A separate offense means each day, after official notice is given, that a person performs plumbing work that is unlawful or is not in compliance with the provisions of this article.

(d) The Commissioner of Labor may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or
are occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the Commissioner of Labor and with any final decision of the Commissioner of Labor. The Commissioner of Labor shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the Commissioner of Labor may appeal the action pursuant to the provisions of chapter twenty-nine-a of this code.

§21-14-8. Inapplicability of local ordinances.

On and after the first day of January, two thousand nine, a political subdivision of this state may not require, as a condition precedent to the performance of plumbing work in the political subdivision, a person who holds a valid and current license issued under the provisions of this article, to have any other license or other evidence of competence as a plumber.


All fees paid pursuant to the provisions of this article, shall be paid to the Commissioner of Labor and deposited in a special revenue account with the State Treasurer for the use of the Commissioner of Labor to enforce the provisions of this article.

CHAPTER 29. MISCELLANEOUS BOARDS AND COMMISSIONS.
ARTICLE 3D. SUPERVISION OF FIRE PROTECTION WORK.

§29-3D-1. Declaration of purpose.

The provisions of this article are intended to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform fire protection work through licensure by the State Fire Marshal.

§29-3D-2. Definitions.

As used in this article:

(a) "Fire protection layout technician" is an individual who has achieved National Institute for Certification in Engineering Technologies (NICET) Level III or higher certification, and who has the knowledge, experience and skills necessary to layout fire protection systems based on engineering design documents.
(b) “Fire protection system” means any fire protection suppression device or system designed, installed and maintained in accordance with the applicable National Fire Protection Association (NFPA) codes and standards, but does not include public or private mobile fire vehicles.

(c) "Fire protection work" means the installation, alteration, extension, maintenance, or testing of all piping, materials and equipment inside a building, including the use of shop drawings prepared by a fire protection layout technician, in connection with the discharge of water, other special fluids, chemicals or gases and backflow preventers for fire protection for the express purpose of extinguishing or controlling fire.

(d) "Journeyman sprinkler fitter" means a person qualified by at least ten thousand hours of work experience installing, adjusting, repairing and dismantling fire protection systems and who is competent to instruct and supervise the fire protection work of a sprinkler fitter in training.

(e) "License" means a valid and current license issued by the State Fire Marshal in accordance with the provisions of this article.

(f) "Sprinkler fitter in training" means a person with interest in and an aptitude for performing fire protection work but who alone is not capable of performing such work, and who has fewer than ten thousand hours of experience installing, adjusting, repairing and dismantling fire protection systems.
§29-3D-3. License required; exemptions.

(a) On and after the first day of January, two thousand nine, a person performing or offering to perform fire protection work in this state shall have a license issued by the State Fire Marshal, in accordance with the provisions of this article.

(b) A person licensed under this article must carry a copy of the license on any job in which fire protection work is being performed.

(c) This article does not apply to:

(1) A person who personally performs fire protection work on a single family dwelling owned or leased, and occupied by that person;

(2) A person who performs fire protection work at any manufacturing plant or other industrial establishment as an employee of the person, firm or corporation operating the plant or establishment;

(3) A person who, while employed by a public utility or its affiliate, performs fire protection work in connection with the furnishing of public utility service.

(4) A person who performs fire protection work while engaging in the business of installing, altering or repairing water distribution or drainage lines outside the foundation walls of a building, public or private sewage treatment or
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24 water treatment systems including all associated structures or
buildings, sewers or underground utility services;

26 (5) A person who performs fire protection work while
engaged in the installation, extension, dismantling,
adjustment, repair or alteration of a heating ventilation and
air conditioning (HVAC) system, air-veyor system, air
exhaust system or air handling system; or

31 (6) A person who performs fire protection work at a coal
mine that is being actively mined or where coal is being
processed.

§29-3D-4. Rule-making authority.

1 The State Fire Marshal shall propose rules for legislative
approval, in accordance with the provisions of article three,
chapter twenty-nine-a of this code, for the implementation
and enforcement of the provisions of this article, which shall
provide:

6 (1) Standards and procedures for issuing and renewing
licenses, including classifications of licenses as defined in
this article, applications, examinations and qualifications;

9 (2) Provisions for the granting of licenses without
examination, to applicants who present satisfactory evidence
of having the expertise required to perform work at the level
of the classifications defined in this article and who apply for
licensure on or before the first day of July, two thousand
nine: Provided, That if a license issued under the authority
of this subsection subsequently lapses, the applicant is subject to all licensure requirements, including the examination;

(3) Reciprocity provisions;

(4) Procedures for investigating complaints and revoking or suspending licenses, including appeal procedures;

(5) Fees for testing, issuance and renewal of licenses, and other costs necessary to administer the provisions of this article;

(6) Enforcement procedures; and

(7) Any other rules necessary to effectuate the purposes of this article.

§29-3D-5. Enforcement.

The State Fire Marshal and his or her deputy fire marshal, assistant fire marshal or assistant fire marshal-in-training, is authorized to enforce the provisions of this article, and may, at reasonable hours, enter any building or premises where fire protection work is performed and issue citations for noncompliance.

§29-3D-6. Denial, suspension and revocation of license.

(a) The State Fire Marshal may deny a license to any applicant who fails to comply with the rules established by
the State Fire Marshal, or who lacks the necessary qualifications.

(b) The State Fire Marshal may, upon complaint or upon his or her own inquiry, and after notice to the licensee, suspend or revoke a licensee’s license if:

(1) The license was granted upon an application or documents supporting the application which materially misstated the terms of the applicant’s qualifications or experience;

(2) The licensee subscribed or vouched for a material misstatement in his or her application for licensure;

(3) The licensee incompetently or unsafely performs plumbing or fire protection work; or

(4) The licensee violated any statute of this state, any legislative rule or any ordinance of any municipality or county of this state which protects the consumer or public against unfair, unsafe, unlawful or improper business practices.

§29-3D-7. Penalties.

(a) On and after the first day of January, two thousand nine, a person performing or offering to perform fire protection work without a license issued by the State Fire Marshal, is subject to a citation.

(b) Any person continuing to engage in fire protection work after the issuance of a citation is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:
(1) For the first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For the second offense, a fine of not less than five hundred dollars nor more than two thousand dollars, or confinement in jail for not more than six months, or both;

(3) For the third and subsequent offenses, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in jail for not less than thirty days nor more than one year.

(c) A separate offense means each day, after official notice is given, that a person performs fire protection work that is unlawful or is not in compliance with the provisions of this article.

(d) The State Fire Marshal may institute proceedings in the circuit court of the county where the alleged violation of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article. A circuit court by injunction may compel compliance with the provisions of this article, with the lawful orders of the State Fire Marshal and with any final decision of the State Fire Marshal. The State Fire Marshal shall be represented in all such proceedings by the Attorney General or his or her assistants.

(e) Any person adversely affected by an action of the State Fire Marshal may appeal the action pursuant to the provisions of chapter twenty-nine-a of this code.

§29-3D-8. Inapplicability of local ordinances.

On and after the first day of January, two thousand nine, a political subdivision of this state may not require, as a condition precedent to the performance of fire protection
work in the political subdivision, a person who holds a valid and current license issued under the provisions of this article, to have any other license or other evidence of competence as a fire protection worker.


All fees paid pursuant to the provisions of this article, shall be paid to the State Fire Marshal and deposited in a special revenue account with the State Treasurer for the use of the State Fire Marshal as provided in subsection (c), section twelve-b, article three of this chapter.
from members or employees of the county or municipality; setting forth certain permissible activities; and providing penalties for appointed or elected officials who violate the provisions of this bill.

_Be it enacted by the Legislature of West Virginia:_

That §7-14-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-14-19 of said code be amended and reenacted, all to read as follows:

Chapter
  7. County Commissions and Officers.
  8. Municipal Corporations

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-15. Political activities of members prohibited; exceptions.

(a) A deputy sheriff covered by the provisions of this article may not:

1. (1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any person who is a member or employee of the county sheriff’s department by which they are employed;

2. (2) Use any official authority or influence, including, but not limited to, the wearing by a deputy sheriff of his or her uniform, for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: _Provided, That this subdivision shall not be construed to prohibit any deputy sheriff from_
casting his or her vote at any election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue; or

(4) Be a candidate for or hold any other public office in the county in which he or she is employed: Provided, That any deputy sheriff that is subject to the provisions of 5 U. S. C. § 1501, et seq., may not be a candidate for elective office.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for deputy sheriffs.

(c) No person may be appointed or promoted to or demoted or dismissed from any position held by a deputy sheriff or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen, chapter eight of this code.

(d) Any deputy sheriff violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this section.
(e) Any three residents of the county may file their written petition with the civil service commission thereof setting out therein the grounds upon which a deputy sheriff of such county should be removed for a violation of subsection (a) of this section. Notice of the filing of such petition shall be given by the commission to the accused deputy, which notice shall require him to file a written answer to the charges set out in the petition within thirty days of the date of such notice. The petition and answer thereto, if any, shall be entered upon the records of the civil service commission. If the answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the civil service commission may be granted, an order shall be entered by the commission declaring the appointment of the deputy vacated. If such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the civil service commission may be granted, the accused deputy may demand within such period a public hearing on the charges, or the civil service commission may, in its discretion and without demand therefor, set a date and time for a public hearing on the charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the civil service commission be granted. A written record of all testimony taken at such hearing shall be kept and preserved by the civil service commission, which record shall be sealed and not be open to public inspection if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining, in whole or in part, the charges made or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of such deputy to be vacated and thereupon the sheriff shall immediately remove
the deputy from his office and from the payroll of the county. Notice of the action of the commission shall be given by registered letter to the county court and the sheriff. If the sheriff fails to immediately comply with the order of the commission, he shall be punished for contempt, upon application of the commission to the circuit court of the county.

(f) An appeal from the ruling of the commission may be had in the same manner and within the same time as specified in section seventeen of this article for an appeal from a ruling of a commission after hearing held in accordance with the provisions of said section.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-19. Political activities of members prohibited; exceptions.

(a) A member of a paid police department may not:

1 (1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any
person who is a member or employee of the municipality by
which they are employed;

(2) Use any official authority or influence, including, but
not limited to, the wearing by a municipal police officer of
his or her uniform for the purpose of interfering with or
affecting the nomination, election or defeat of any candidate
or the passage or defeat of any ballot issue: Provided, That
this subdivision shall not be construed to prohibit any
municipal police officer from casting his or her vote at any
election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute
anything of value to a party, committee, organization, agency
or person for the nomination, election or defeat of a ballot
issue; or

(4) Be a candidate for or hold any other public office in
the municipality in which he or she is employed: Provided,
That any municipal police officer that is subject to the
provisions of 5 U. S. C. §1501, et seq., may not be a
candidate for elective office.

(b) Other types of partisan or nonpartisan political
activities not inconsistent with the provisions of subsection
(a) of this section are permissible political activities for
municipal police officers.

(c) No person may be appointed or promoted to or
demoted or dismissed from any position held by a municipal
police officer or in any way favored or discriminated against
because of his or her engagement in any political activities
authorized by the provisions of this section. Any elected or
appointed official who violates the provisions of this
subsection is guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen of this chapter.

(d) Any member of any such paid police department violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this section.

(e) Any three residents of any such city may file their written petition with the policemen's civil service commission thereof setting out therein the grounds upon which a member of the paid police department of such city should be removed for a violation of subsection (a) of this section. Notice of the filing of such petition shall be given by said commission to the accused member, which notice shall require the said member to file a written answer to the charges set out in the petition within thirty days of the date of said notice. The said petition and answer thereunto, if any, shall be entered upon the records of the commission. If such answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, an order shall be entered by the commission declaring the appointment of said member vacated; if such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, the accused member may demand within such period a public hearing on the charges, or the commission may, in its discretion and without demand therefor, set a time for a public hearing on said charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the commission be granted. A written record of all testimony taken at such hearing shall be kept and
preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining, in whole or in part, the charges made or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of said member to be vacated and thereupon the proper municipal authorities shall immediately remove said member from the police force and from the payroll of said city. Notice of the action of the commission shall be given by registered letter to the mayor and chief of police of the city; and for failure to immediately comply with the order of the commission such officer or officers shall be punished for contempt, upon application of the commission to the circuit court of the county in which the city or the major portion of the territory thereof is located.

(f) An appeal from the ruling of the commission may be had in the same manner and within the same time as specified in section twenty of this article for an appeal from a ruling of a commission after hearing held in accordance with the provisions of said section.
AN ACT to amend and reenact §15-2-25a, §15-2-25b, §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-31a, §15-2-31b, §15-2-32, §15-2-33, §15-2-34, §15-2-35, §15-2-37, §15-2-38, §15-2-39 and §15-2-44 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia State Police Death, Disability and Retirement Fund; meaning of terms; definitions; continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund; retirement; awards and benefits; leased employees; retirement annual annuity adjustments; credit toward retirement for member’s prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service; awards and benefits for disability incurred in performance of duty; awards and benefits for disability due to other causes; disability physical examinations; termination; application for disability benefit; determinations; annual report on disability retirement experience; retirant not to exercise police authority; retention of group insurance; awards and benefits to dependents of member when the member dies in performance of duty; dependents of a duty disability retirant; dependent child scholarship and amount; awards and benefits to dependents of employee when the employee dies from
Be it enacted by the Legislature of West Virginia:


ARTICLE 2. WEST VIRGINIA STATE POLICE.


§15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.

§15-2-27. Retirement; awards and benefits; leased employees.


§15-2-28. Credit toward retirement for members’s prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service.


§15-2-30. Awards and benefits for disability due to other causes.

§15-2-31. Disability physical examinations; termination.

§15-2-31a. Application for disability benefit; determinations.


§15-2-32. Retirant not to exercise police authority; retention of group insurance.

§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

§15-2-34. Awards and benefits to dependents of employee when the employee dies from nonservice-connected causes.

§15-2-35. Awards and benefits to dependents of retirant or after an employee serves twenty years.
§15-2-37. Refunds to certain employees upon discharge or resignation; deferred retirement.

§15-2-38. Refund to dependents upon death of member not eligible for benefits.


§15-2-44. Federal law maximum benefit limitations.


1 Any term used in this article relating to the Death, Disability and Retirement Fund has the same meaning as when used in a comparable context of the laws of the United States, unless a different meaning is clearly required. Any reference in this article to the Internal Revenue Code means the Internal Revenue Code, as it has been amended.


1 As used in this article, unless the context clearly requires a different meaning:

3 (a) "Agency" means the West Virginia State Police.

4 (b) "Beneficiary" means a surviving spouse or other surviving beneficiary who is entitled to, or will be entitled to, an annuity or other benefit payable by the fund.

7 (c) "Board" means the West Virginia Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

10 (d) "Dependent child" means any unmarried child or children born to or adopted by a member of the fund who is:

12 (1) Under the age of eighteen;
(2) After reaching eighteen years of age, continues as a full-time student in an accredited high school, college, university, business or trade school, until the child or children reaches the age of twenty-three years; or

(3) Is financially dependent on the member by virtue of a permanent mental or physical disability upon evidence satisfactory to the board.

(e) "Dependent parent" means the member’s parent or step-parent claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(f) "Employee" means any person regularly employed in the service of the agency as a law-enforcement officer before the twelfth day of March, one thousand nine hundred nine-four, and who is eligible to participate in the fund.

(g) "Fund", "plan" or "system" means the West Virginia State Police Death, Disability and Retirement Fund.

(h) "Law-enforcement officer" means an individual employed or otherwise engaged in either a public or private position which involves the rendition of services relating to enforcement of federal, state or local laws for the protection of public or private safety, including, but not limited to, positions as deputy sheriffs, police officers, marshals, bailiffs, court security officers or any other law-enforcement position which requires certification, but excluding positions held by elected sheriffs or appointed chiefs of police whose duties are determined by the board to be purely administrative in nature.
(i) "Member" means any person who has contributions standing to his or her credit in the fund and who has not yet entered into retirement status.

(j) "Partially disabled" means an employee's inability, on a probable permanent basis, to perform the essential duties of a law-enforcement officer by reason of any medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months, but which impairment does not preclude the employee from engaging in other types of nonlaw-enforcement employment.

(k) "Physical or mental impairment" means an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques.

(l) "Retirant " or "retiree" means any former member who is receiving an annuity payable by the fund;

(m) "Surviving spouse" means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(n) "Totally disabled" means an employee's probable permanent inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. For purposes of this subsection, an employee is totally disabled only if his or her physical or mental impairments are so severe that he or she is not only unable to perform his or her previous work as an employee
of the agency but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (1) The work exists in the immediate area in which the employee lives; (2) a specific job vacancy exists; or (3) the employee would be hired if he or she applied for work.

§15-2-26. Continuation of Death, Disability and Retirement Fund; designating the Consolidated Public Retirement Board as administrator of fund.

(a) There is continued the Death, Disability and Retirement Fund created for the benefit of members, retirants and any dependents of retirants or deceased members of the fund.

(b) There shall be deducted from the monthly payroll of each employee and paid into the fund six percent of the amount of his or her salary: Provided, That beginning on the first day of July, one thousand nine hundred ninety-four, there shall be deducted from the monthly payroll of each employee and paid into the fund seven and one-half percent of the amount of his or her salary: Provided, however, That on and after the first day of July, one thousand nine hundred ninety-five, there shall be deducted from the monthly payroll of each employee and paid into the fund nine percent of the amount of his or her salary. An additional twelve percent of the monthly salary of each employee shall be paid by the State of West Virginia monthly into the fund out of the annual appropriation for the agency: Provided further, That beginning on the first day of July, one thousand nine hundred ninety-five, the agency shall pay thirteen percent of the monthly salary of each employee into the fund: And provided
further, That beginning on the first day of July, one thousand nine hundred ninety-six, the agency shall pay fourteen percent of the monthly salary of each employee into the fund: And provided further, That on and after the first day of July, one thousand nine hundred ninety-seven, the agency shall pay fifteen percent of the monthly salary of each employee into the fund. There shall also be paid into the fund amounts that have previously been collected by the superintendent of the agency on account of payments to employees for court attendance and mileage, rewards for apprehending wanted persons, fees for traffic accident reports and photographs, fees for criminal investigation reports and photographs, fees for criminal history record checks, fees for criminal history record reviews and challenges or from any other sources designated by the superintendent. All moneys payable into the fund shall be deposited in the State Treasury and the board shall keep a separate account thereof.

(c) Notwithstanding any other provisions of this article, forfeitures under the fund shall not be applied to increase the benefits any member would otherwise receive under the fund.

(d) The moneys in this fund, and the right of a member to a retirement allowance, to the return of contributions, or to any benefit under the provisions of this article, are exempt from any state or municipal tax; are not subject to execution, garnishment, attachment or any other process whatsoever, with the exception that the benefits or contributions under the fund are subject to "qualified domestic relations orders" as that term is defined in Section 414(p) of the Internal Revenue Code with respect to governmental plans; and are unassignable except as is provided in this article. The fund shall be administered by the board created pursuant to article ten-d, chapter five of this code.
54 (e) All moneys paid into and accumulated in the fund, except amounts designated or set aside by the awards, shall be invested by the West Virginia Investment Management Board as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The board shall retire any member of the fund who has filed with the board his or her voluntary petition in writing for retirement and:

4 (1) Has or shall have completed twenty-five years of service as a member of the fund (including military service credit granted under the provisions of section twenty-eight of this article);

8 (2) Has or shall have attained the age of fifty years and has or shall have completed twenty years of service as a member of the fund (excluding military service credit granted under section twenty-eight of this article); or

12 (3) Being under the age of fifty years has or shall have completed twenty years of service as a member of the fund (excluding military service credit granted under section twenty-eight of this article).

16 (b) When the board retires any member under any of the provisions of this section, the member is entitled to receive annually and shall be paid from the fund in equal monthly installments during his or her lifetime while in status of retirement, one or the other of two amounts, whichever is the greater:
(1) An amount equal to five and one-half percent of the aggregate of salary paid to the employee during the whole period of service as an employee of the agency; or

(2) The sum of six thousand dollars.

When a member has or shall have served twenty years or longer but less than twenty-five years as a member of the fund and is retired under any of the provisions of this section before he or she has attained the age of fifty years, payment of monthly installments of the amount of retirement award to the member shall commence on the day following the date he or she attains the age of fifty years. Beginning on the fifteenth day of July, one thousand nine hundred ninety-four, in no event may the provisions of section thirteen, article sixteen, chapter five of this code be applied in determining eligibility to retire with either immediate or deferred commencement of benefit.

(c) A member meeting the age and service requirements of this section who terminates employment at two thousand four hundred hours may begin to receive retirement annuity payments immediately upon termination of employment. Any member meeting the age and service requirements of this section who terminates employment at a time of day other than two thousand four hundred hours shall receive a pro rata share of a full day's amount for that day. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement petition and commence annuity payments as soon as administratively feasible.

(d) Any individual who is a leased employee is not eligible to participate in the fund. For purposes of this fund, a "leased employee" means any individual who performs
services as an independent contractor or pursuant to an
agreement with an employee leasing organization or other
similar organization. If a question arises regarding the status
of an individual as a leased employee, the board has final
power to decide the question.


(a) Every retirant of the fund who is fifty-five years of
age or older and who is retired by the board under the
provisions of section twenty-seven of this article; every
retirant of the fund who is retired by the board under the
provisions of section twenty-nine or thirty of this article; and
every beneficiary receiving a benefit pursuant to section
thirty-three or thirty-four of this article is eligible to receive
an annual retirement annuity adjustment equal to three and
seventy-five hundredths percent of his or her retirement
award or beneficiary award. The adjustments may not be
retroactive. Yearly adjustments shall begin upon the first day
of July of each year. The annuity adjustments shall be paid to
the retirants or beneficiaries from the fund in equal monthly
installments while in status of retirement or payment of
beneficiary award. The annuity adjustments shall supplement
the retirement awards and benefits as provided in this article.

(b) Any retirant or beneficiary who receives a benefit
pursuant to the provisions of section twenty-nine, thirty,
thirty-three or thirty-four of this article shall begin to receive
the annual annuity adjustment one year after the
commencement of the benefit on the next July first:
Provided, That if the retirant has been retired for less than
one year or if the beneficiary has been in receipt of
beneficiary payments for less than one year when the first
annuity adjustment is given on that July first, that first
annuity adjustment shall be a pro rata share of the full year's annuity adjustment.

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when employee has joined armed forces in time of armed conflict; qualified military service.

(a) For purposes of this section, the term "active military duty" means full-time active duty with the armed forces of the United States, namely the United States Air Force, Army, Coast Guard, Marines or Navy; and service with the National Guard or reserve military forces of any of the armed forces when the employee has been called to active full-time duty and has received no compensation during the period of the duty from any person other than the armed forces.

(b) Any member of the fund who has previously served on active military duty is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police under the provisions of this article for a period equal to the active military duty not to exceed five years, subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That he or she substantiates by appropriate documentation or evidence his or her period of active military duty;
(3) That he or she is not receiving credit from any other retirement system administered by the board for his or her active military duty; and

(4) That, except with respect to disability retirement pay awarded under section thirty of this article, he or she has actually served with the fund for twenty years exclusive of his or her active military duty.

(c) The amount of retirement pay to which any member is entitled shall be calculated and determined as if he or she had been receiving for the period of his or her active military duty a monthly salary from the agency equal to the average monthly salary which he or she actually received from the agency for his or her total service with the agency exclusive of the active military duty. The superintendent shall transfer and pay into the fund from moneys appropriated for the agency, a sum equal to eighteen percent of the aggregate of the salaries on which the retirement pay of all members has been calculated and determined for their periods of active military duty. In addition, any person who, while an employee of the agency was commissioned, enlisted or inducted into the armed forces of the United States or, being a member of the reserve officers' corps, was called to active duty in the armed forces between the first day of September, one thousand nine hundred forty, and the close of hostilities in World War II, or between the twenty-seventh day of June, one thousand nine hundred fifty, and the close of the armed conflict in Korea on the twenty-seventh day of July, one thousand nine hundred fifty-three, between the first day of August, one thousand nine hundred sixty-four, and the close of the armed conflict in Vietnam, or during any other period of armed conflict by the United States whether sanctioned by a declaration of war by the Congress or by executive or other
order of the President, is entitled to and shall receive credit on the minimum period of service required by law for retirement pay from the service of the West Virginia State Police for a period equal to the full time he or she has or shall, pursuant to the commission, enlistment, induction or call, have served with the Armed Forces subject to the following:

(1) That he or she has been honorably discharged from the armed forces;

(2) That within ninety days after honorable discharge from the armed forces he or she has presented himself or herself to the superintendent and offered to resume service as an active employee of the agency; and

(3) That he or she has made no voluntary act, whether by reenlistment, waiver of discharge, acceptance of commission or otherwise, to extend or participate in extension of the period of service with the armed forces beyond the period of service for which he or she was originally commissioned, enlisted, inducted or called.

(d) That amount of retirement pay to which any employee is entitled shall be calculated and determined as if the employee has continued in the active service of the agency at the rank or grade to him or her appertaining at the time of the commission, induction, enlistment or call, during a period coextensive with the time the employee served with the armed forces pursuant to the commission, induction, enlistment or call. The superintendent of the agency shall transfer and pay each month into the fund from moneys appropriated for the agency a sum equal to eighteen percent of the aggregate of salary which all employees would have
been entitled to receive had they continued in the active service of the agency during a period coextensive with the time the employee served with the armed forces pursuant to the commission, induction, enlistment or call: Provided, That the total amount of military service credit allowable under this section shall not exceed five years.

(e) Notwithstanding any of the preceding provisions of this section, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code. For purposes of this section, "qualified military service" has the same meaning as in Section 414(u) of the Internal Revenue Code. The board may determine all questions and make all decisions relating to this section and, pursuant to the authority granted to the board in section one, article ten-d, chapter five of this code, may promulgate rules relating to contributions, benefits and service credit to comply with Section 414(u) of the Internal Revenue Code.


(a) Any member of the fund who has not yet entered retirement status on the basis of age and service and who becomes partially disabled by injury, illness or disease resulting from any occupational risk or hazard inherent in or peculiar to the services required of employees of the agency or incurred pursuant to or while the employee was engaged in the performance of his or her duties as an employee of the agency shall, if, in the opinion of the board, he or she is by reason of that cause probably permanently unable to perform adequately the duties required of him or her as an employee of the agency, but is able to engage in any other gainful
employment in a field other than law enforcement, be retired
from active service by the board. The member thereafter is
entitled to receive annually from the fund in equal monthly
installments during his or her lifetime; or until the disability
eligibility sooner terminates, one or the other of two amounts,
whichever is greater:

   (1) An amount equal to five and one-half percent of the
total salary which would have been earned during twenty-five
years, or during actual service if more than twenty-five years
in the fund, based on the average earnings of the retirant
while employed as an employee of the agency; or

   (2) The sum of six thousand dollars.

(b) A retirant who is partially disabled under this article
may not, while in receipt of benefits for partial disability, be
employed as a law-enforcement officer: Provided, That a
retirant retired on partial disability under this article may
serve as an elected sheriff or appointed chief of police in the
state without a loss of disability retirement benefits so long
as the elected or appointed position is shown, to the
satisfaction of the board, to require the performance of
administrative duties and functions only, as opposed to the
full range of duties of a law-enforcement officer.

(c) If any member not yet in retirement status on the basis
of age and service is found by the board to be permanently
and totally disabled as the result of a physical or mental
impairment resulting from any occupational risk or hazard
inherent in or peculiar to the services required of employees
of the agency or incurred pursuant to or while the member
was engaged in the performance of his or her duties as an
employee of the agency, the member is entitled to receive
annually and there shall be paid from the fund in equal
monthly installments during his or her lifetime or until the
disability eligibility sooner terminates, an amount equal to
eight and one-half percent of the total salary which would
have been earned by the employee during twenty-five years,
or during actual service if more than twenty-five years of
service in the fund, based on the average earnings of the
retirant while employed as an employee of the agency:

Provided, That in no event may the amount be less than
fifteen thousand dollars per annum, unless otherwise required
by this article.

(d) The superintendent may expend moneys from funds
appropriated for the agency in payment of medical, surgical,
laboratory, X-ray, hospital, ambulance and dental expenses
and fees and reasonable costs and expenses incurred in the
purchase of artificial limbs and other approved appliances
which may be reasonably necessary for any member or
disability retirant who has or becomes temporarily,
permanently or totally disabled by injury, illness or disease
resulting from any occupational risk or hazard inherent in or
peculiar to the service required of employees of the agency
or incurred pursuant to or while the member was or shall be
engaged in the performance of duties as an employee of the
agency. Whenever the superintendent determines that any
disabled member or retirant is ineligible to receive any of the
aforesaid benefits at public expense, the superintendent shall,
at the request of the disabled member or retirant, refer the
matter to the board for hearing and final decision. In no case
will the compensation rendered to health care providers for
medical and hospital services exceed the then current rate
schedule approved by the West Virginia Insurance
Commission.
(e) Any member awarded a disability benefit under the provisions of this section may receive retirement disability annuity payments on the day following the board’s approval of his or her disability application. Upon termination of employment and receipt of properly executed forms from the agency and the member, the board shall process the member's disability retirement benefit and commence annuity payments as soon as administratively feasible.

(f) For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-30. Awards and benefits for disability due to other causes.

(a) If any employee who has served less than twenty years and who remains in the active service of the agency has, in the opinion of the board, become permanently partially or totally disabled to the extent that the employee cannot adequately perform the duties required of an employee of the agency from any cause other than those set forth in the preceding section and not due to vicious habits, intemperance or willful misconduct on his or her part, the employee shall be retired by the board. The employee is entitled to receive annually and shall be paid from the fund in equal monthly installments during a period equal to one-half the time he or she served as an employee of the agency or until the disability eligibility sooner terminates, a sum equal to five and one-half percent of the total salary which would have been earned during twenty-five years of service. At the end of the one-half time period of service, the benefit payable for the remainder of the retirant’s life is an annual sum paid in monthly installments equal to one-half the base salary received by the retirant from the agency in the preceding twelve-month period immediately prior to the disability
That if the retirant was not employed with the agency for twelve months immediately prior to the disability award, the amount of monthly salary shall be annualized for the purpose of determining the benefit.

(b) If the employee, at the time of retirement under the terms of this section, has served twenty years or longer as an employee of the agency, the employee is entitled to receive annually and shall be paid from the fund in equal monthly installments, commencing on the date the employee is retired and continuing during his or her lifetime while in status of retirement or until the disability eligibility sooner terminates, a sum equal to five and one-half percent of the aggregate of salary paid to the retirant through the day immediately preceding his or her disability award, to be determined in the manner provided by subsection (c), section twenty-seven of this article.

(c) An employee awarded a disability benefit under the provisions of this section may receive retirement disability annuity payments on the day following the board's approval of his or her disability application. Upon termination of employment and receipt of properly executed forms from the agency and the employee, the board shall process the disability retirement benefit and commence annuity payments as soon as administratively feasible.

(d) For the purposes of this section, the term "salary" does not include any compensation paid for overtime service.

§15-2-31. Disability physical examinations; termination.

The board may require any retirant who has been retired with compensation on account of disability to submit to a
physical and/or mental examination by a physician or physicians selected or approved by the board and cause all costs incident to the examination including hospital, laboratory, X-ray, medical and physicians' fees to be paid out of funds appropriated to defray the current expense of the agency and a report of the findings of the physician or physicians shall be submitted in writing to the board for its consideration. If, from the report or from the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from the disability to the extent that he or she is able to perform adequately the duties of a law-enforcement officer, the board shall order that all payments from the fund to that disabled retirant be terminated. If, from the report or the report and hearing on the report, the board is of the opinion and finds that the disabled retirant has recovered from his or her previously determined probable permanent disability to the extent that he or she is able to engage in gainful employment but remains unable to adequately perform the duties of a law-enforcement officer, the board shall order the payment, in monthly installments of an amount equal to two thirds of the salary, in the case of a retirant retired under the provisions of section twenty-nine of this article or equal to one half of the salary, in the case of a retirant retired under the provisions of section thirty of this article, excluding any compensation paid for overtime service, for the twelve-month employment period immediately preceding the disability award: Provided, That if the retirant had not been employed with the fund for twelve months immediately prior to the disability award, the amount of monthly salary shall be annualized for the purpose of determining the benefit.
§15-2-31a. Application for disability benefit; determinations.

(a) Application for a disability benefit may be made by a member under the provisions of section twenty-nine of this article, by an employee under the provisions of section thirty of this article or, if the member or employee is under an incapacity, by a person acting with legal authority on the member's or the employee's behalf. After receiving an application for a disability benefit, the board shall notify the superintendent of the agency that an application has been filed: Provided, That when, in the judgment of the superintendent, an employee is no longer physically or mentally fit for continued duty as an employee of the West Virginia State Police and the employee has failed or refused to make application for disability benefits under this article, the superintendent may petition the board to retire the employee 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 employee's employment, information relating to the superintendent's position on the work relatedness of the employee's alleged disability, complete copies of the employee'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 retirant refuses to file a statement and other information 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 determines 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.


Not later than the first day of January, two thousand six, and each first day of January thereafter, the board shall prepare a report for the preceding fiscal year of the disability retirement experience of the West Virginia State Police Death, Disability and Retirement Fund. The report shall specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit recipients to the total number of West Virginia State Police employees who are members of the fund. The report shall be submitted to the Governor and the chairpersons of the standing committees of the Senate and
§15-2-32. Retirant not to exercise police authority; retention of group insurance.

A retirant may not exercise any of the powers conferred upon active employees by section twelve of this article; but is entitled to receive free of cost to the retirant and retain as his or her separate property one complete standard uniform prescribed by section ten of this article: Provided, That the uniform may be worn by a retirant on occasions prescribed by the superintendent. The superintendent shall maintain at public expense for the benefit of all retirants that group life insurance mentioned in section ten of this article. The superintendent, when he or she is of opinion that the public safety shall require, may recall to active duty during any period determined by the superintendent, any retiree who is retired under the provisions of section twenty-seven of this article, provided the consent of the retiree to reassume duties of active membership shall first be obtained. Any retirant who resumes status of active membership is not entitled to receive retirement pay or benefits, but in lieu thereof, is entitled to receive that rate of salary and allowance pertinent to the rank or grade previously held by the retirant. When the former retirant is released from active duty, he or she shall reassume the status of retirement and shall be entitled to receive appropriate benefits as provided by this article: Provided, That the amount of the benefits shall in no event be less than the amount determined by the order of the board previously made in his or her behalf.
§15-2-33. Awards and benefits to dependents of member when the member dies in performance of duty; to dependents of a duty disability retirant; dependent child scholarship and amount.

(a) The surviving spouse or the dependent child or children or dependent parent or parents of any member who has lost or loses 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 employees while the member was or is engaged in the performance of his or her duties as an employee of the agency, or if a retirant dies from any cause after having been retired pursuant to the provisions of section twenty-nine of this article, the surviving spouse or other dependent 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 the greater of one or the other of two amounts:

(1) An amount equal to five and one-half percent of the total salary which was or would have been earned by the deceased member or duty disability retirant during twenty-five years of service based on the average earnings of the member or duty disability retirant while employed by the agency; or

(2) The sum of six thousand dollars.

(b) In addition, the surviving spouse is entitled to receive and shall be paid one hundred 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 twenty-five percent 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 or retirant during their joint lifetimes a sum equal to the amount which a surviving spouse, without children, would have received: Provided, That when there is 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.

(c) Any person qualified 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 those institutions so long as the recipient makes application to the board on an approved form and under rules as 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.

(d) A surviving spouse or dependent of an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. A surviving spouse or dependent of a member who is not currently an employee meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date of the deceased member’s death. A surviving spouse or dependent of a retirant meeting the requirements of this section is entitled to receive beneficiary payments on the first day of the month following the date of
the deceased retirant’s death. Upon receipt of properly
executed forms from the agency and the surviving spouse or
dependent, the board shall process the surviving spouse or
dependent benefit as soon as administratively feasible.

(e) For the purposes of this section, the term "salary"
does not include any compensation paid for overtime service.

§15-2-34. Awards and benefits to dependents of employee when
the employee dies from nonservice-connected
causes.

(a) If an employee of the agency, before having
completed twenty years of service as an employee of the
agency, dies from any cause other than those specified in this
article and not due to vicious habits, intemperance or willful
misconduct on his or her part, there shall be paid annually in
equal monthly installments from the fund to the surviving
spouse of the employee during his or her lifetime, or until
such time as the surviving spouse remarries, a sum equal to
two and three-quarters percent of the total salary which
would have been earned by the employee during twenty-five
years of service with the agency based on his or her average
earnings while employed with the agency. If there is no
surviving spouse, or the surviving spouse dies or remarries,
there shall be paid monthly to each dependent child or
children from the fund, a sum equal to twenty-five percent 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 employee during their
joint lifetimes, a sum equal to the amount which a surviving
spouse would have been entitled to receive: Provided, That
when there is only 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.

(b) A surviving spouse or dependent meeting the requirements of this section is entitled to receive beneficiary payments on the first day following the date the deceased employee is removed from payroll by the agency. Upon receipt of properly executed forms from the agency and the surviving spouse or dependent, the board shall process the surviving spouse or dependent benefit as soon as administratively feasible.

(c) For the purposes of this section, the term "salary" does not include compensation paid for overtime service.

§15-2-35. Awards and benefits to dependents of retirant or after an employee serves twenty years.

(a) When any employee of the agency has completed twenty years of service or longer as an employee of the agency and has died or dies from any cause or causes other than those specified in this article before having been retired by the board, and when a retirant has died or dies after having been retired by the board under the provisions of this article, there shall be paid annually in equal monthly installments from the fund to the surviving spouse of the employee or retirant during the lifetime or until remarriage of the surviving spouse, an amount equal to three-fourths the retirement benefits the deceased retirant was receiving or would have been entitled to receive while in status of retirement, or would have been entitled to receive to the same effect as if the employee had been retired under the provisions of this article immediately prior to the time of his or her death and in no event to be less than five thousand dollars, unless otherwise required under this article, and in
addition the surviving spouse shall be entitled to receive and
shall be paid from the fund the sum of one hundred dollars
monthly for each dependent child or children. If the surviving
spouse dies or remarries or if there is no surviving spouse,
there shall be paid monthly from the fund to each dependent
child or children of the deceased employee or retirant a sum
equal to twenty-five percent of the surviving spouse's
entitlement. If there is no surviving spouse or no surviving
spouse eligible to receive benefits 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 employee or retirant during their joint lifetimes a
sum equal to the amount which a surviving spouse without
children would have been entitled to receive: Provided, That
when there is only one dependent parent surviving, the parent
shall be entitled to receive during his or her lifetime one-half
the amount which both parents, if living, would have been
entitled to receive.

(b) A surviving spouse or dependent of an employee
meeting the requirements of this section is entitled to receive
beneficiary payments on the first day following the date the
deceased employee is removed from payroll by the agency.
A surviving spouse or dependent of a retirant meeting the
requirements of this section is entitled to receive beneficiary
payments on the first day of the month following the date of
the deceased retirant’s death. Upon receipt of properly
executed forms from the agency and the surviving spouse or
dependent, the board shall process the surviving spouse or
dependent benefit as soon as administratively feasible.

§15-2-37. Refunds to certain employees upon discharge or
resignation; deferred retirement.

(a) Any employee who is discharged by order of the
superintendent or otherwise terminates employment with the
agency, at the written request of the member to the board, is
entitled to receive from the fund a sum equal to the aggregate
of the principal amount of moneys deducted from his or her
salary and paid into the 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 reemployed by the agency shall not receive any
prior service credit in the fund on account of former service.
The employee may redeposit 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 employee who completes ten years of service
with the agency is eligible, upon separation of employment,
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 board retires any
member under any of the provisions of this section, the
member is entitled to receive annually and shall be paid from
the 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 employee during the whole period of service as an employee of the agency; or

(2) The sum of six thousand dollars.

(d) A member may choose, in lieu of a life annuity available under the provisions of subsection (c) of this section, an annuity in a reduced amount payable during the member's lifetime, with one half of the reduced monthly amount paid to his or her surviving spouse, for the spouse's remaining lifetime after the death of the retirant. 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.

(e) A member retiring under the provisions of this section may receive retirement annuity payments on the day following his or her attaining age sixty-two. Upon receipt of properly executed forms from the agency and the member, the board shall process the member's retirement benefit and commence annuity payments as soon as administratively feasible.

§15-2-38. Refund to dependents upon death of member not eligible for benefits.

If any member dies and the board is of the opinion after hearing that the dependent or dependents of the member are ineligible under the provisions of this article to receive any of the benefits provided herein, the board shall refund to the spouse, if surviving, but if not surviving, to the children of the member, and if there is no surviving spouse or children, to the dependent parents, a sum equal to the aggregate of the
principal amount of all moneys deducted from the salary of the member and paid into the fund. If there is no surviving spouse or children or dependent parent or parents, then a sum equal to the aggregate of the principal amount of all moneys deducted from the salary of the member and paid into the fund will be paid to the member’s estate. Whenever a refund is made to the surviving spouse or other dependents of the deceased member, the surviving spouse or other dependents shall not be entitled to any other rights or benefits from the fund.


In any case where under the terms of this article benefits are provided for dependent child or children, the benefits shall be paid for so long as they continue to meet the qualifications provided under the provisions of this article.

§15-2-44. Federal law maximum benefit limitations.

Notwithstanding any other provision of this article or state law, the board shall administer the fund in compliance with the limitations of Section 415 of the Internal Revenue Code and regulations under that section to the extent applicable to governmental plans so that no annuity or other benefit provided under this fund shall exceed those limitations. The extent to which any annuity or other benefit payable under this fund shall be reduced as compared with the extent to which an annuity, contributions or other benefits under any other defined benefit plans or defined contribution plans required to be taken into consideration under Section 415 of the Internal Revenue Code shall be determined by the board in a manner that shall maximize the aggregate benefits payable to the member. If the reduction is under this fund, the board shall advise affected members or retirants of any additional limitation on the annuities required by this section.
AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the Department of Administration and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Administration; 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; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to purchasing; authorizing the Department of Administration to promulgate a legislative rule relating to cannibalization of state property; authorizing the Department of Administration to promulgate a legislative rule relating to waste disposal of state property; authorizing the Department of Administration to promulgate a legislative rule relating to the accountability of state funds and grants; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the deputy sheriff retirement system; authorizing the Consolidated Public Retirement Board to
promulgate a legislative rule relating to the teachers defined contribution system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to teachers retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the public employees retirement system; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to refund, reinstatement and loan interest factors; authorizing the Division of Personnel to promulgate a legislative rule relating to the administrative rule of the Division of Personnel; authorizing the Division of Personnel to promulgate a legislative rule relating to workers' compensation temporary total disability; authorizing the Division of Personnel to promulgate a legislative rule relating to interdepartmental transfer of state employees; and authorizing the Board of Risk & Insurance Management to promulgate a legislative rule relating to mine subsidence insurance.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

Article
2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

1 Under the provisions of article three, chapter twenty-nine-a of the Code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at
the effective date of this section shall continue in full force and
effect until reauthorized in this chapter by legislative enactment
or until amended by emergency rule pursuant to the provisions
of article three, chapter twenty-nine-a of this code.

ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF
ADMINISTRATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-1. Department of Administration.

§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand six, authorized under
the authority of section four, article three, chapter five-a of this
code, modified by the Department of Administration to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on the eleventh day of January,
two thousand seven, relating to the Department of
Administration (purchasing, 148 CSR 1), is authorized with the
following amendments:

On pages two and three, by redesignating subdivisions 4.(a)
through 4.(s) as subdivisions 4.1. through 4.19;

On page two, subdivision 4.(a), line three, after the words
"commodities or services" by striking out the remainder of the
subsection and inserting in lieu thereof the following: "that are
not possible to submit for competitive bid. The Director shall
approve the list before the beginning of each fiscal year and
shall make the list available for public review. Spending units
may purchase the commodities and services on the list directly
from the vendor and are not required to have contracts for
purchase of those items approved by the Purchasing Division.
A spending unit’s request to add commodities and services to
the list must be accompanied by written justification and an
explanation of why competitive bids are not possible. Nothing
in this section supercedes or replaces the Attorney General’s
authority to approve contracts as to form.


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26 On page three, subdivision 4.(p), after the words “relevant training” by adding the words “for agency personnel”;

28 On page three, subdivision 4.(q), by striking out the words “and other purchasing card vendors” and inserting in lieu thereof the word “or”;

31 On page three, by striking out subdivision 4.(r) in its entirety and renumbering the remaining subsection accordingly;

33 On page three, subdivision 4.(s) by striking out the words “twenty five thousand dollar ($25,000)” and inserting in lieu thereof “$25,000”;

36 On page three, subdivision 4.(s) by striking out the word “include” and inserting in lieu thereof the words “may require”;

38 On page three, subdivision 5.1.(c), by striking out “Section 5.3(j)” and inserting in lieu thereof “subsection 5.2.”;

40 On page four, by redesignating subdivision 5.1.2. as subsection 5.2.;

42 On page four, subdivision 6.1.1., by striking out the words “and other purchasing card vendors” and inserting in lieu thereof the word “or”;

45 On page four, subdivision 6.1.3., by striking out the words “Such vendors shall pay the fee in 6.1.4.”;

47 On page four, subdivision 6.1.4., by striking out the words “and other purchasing card vendors” and inserting in lieu thereof the word “or”;

50 On page five, subdivision 6.1.7., line five, by striking out the words “any other State agencies of political subdivision. Furthermore, the” and inserting in lieu thereof the words “other state agencies or political subdivisions. The”;

54 On page five, subdivision 6.1.7., lines six and seven, by striking out the words “to enable the Director or spending unit” and inserting in lieu thereof the word “necessary”;

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On page five, subdivision 6.2.2., line seven, by striking out the words “shall not accept as the bidder’s submission or response” and inserting in lieu thereof the words “may not accept”;

On page five, subdivision 6.2.2., line seven, by striking out the words “received by” and inserting in lieu thereof the words “submitted to”;

On page five, subdivision 6.2.4., by striking out the words “Any vendor submitting bids via facsimile shall be aware that bids sent in such manner” and inserting in lieu thereof the words “Bids submitted via facsimile”;

On page five, subdivision 6.2.4., after the words “completeness of” by striking out the word “bid” and inserting in lieu thereof the word “bids”;

On page six, subdivision 6.2.5., line three, by striking out the word “leave” and inserting in lieu thereof the words “be removed from”;

On page six, subdivision 6.3.1., line one, by striking out the words “the delivering of” and inserting in lieu thereof the word “delivering”;

On page six, subdivision 6.3.1., line five, by striking out the words “The bids” and inserting in lieu thereof the word “Bids”;

On page eight, subdivision 6.5.1., after the words “spending units.” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “No person may write or attempt to influence the drafter of specifications to limit competition or favor or disfavor a particular vendor.”;

On page eight, subdivision 6.5.2., by striking out the words “These standard” and inserting in lieu thereof the word “Standard”;

On page nine, subdivision 6.5.2., after the words “the Director determines there are” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “applicable nationally accepted standards. Use of standard
specifications is mandatory unless an exemption is granted by the Director.”;

On page nine, subsection 6.6., by striking out “6.6.1.”;

On page nine, subsection 6.6., by striking out the words “no conflict of interest,” and inserting in lieu thereof the words “that no conflict of interest exists,”;

On page nine, subsection 6.6., lines four and five, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page nine, subsection 6.6., line seven, by striking out the word “vendors” and inserting in lieu thereof the word “vendor”;

On page nine, subdivision 7.1.2., line one, by striking out the word “should” and inserting in lieu thereof the word “may”;

On page nine, subsection 7.2., line one, after the words “or less” by inserting the words “per transaction”;

On page nine, subsection 7.2., line four, by striking out the words “these records of the” and inserting in lieu thereof the words “records of these”;

On page ten, subsection 7.4., line four, by striking out the word “shall” and inserting in lieu thereof the word “is”;

On page eleven, subdivision 7.5.4., after the words “formal bidding” by striking out the word “or,”;

On page eleven, subdivision 7.5.5., by striking out the words “as described” and inserting in lieu thereof the words “in the same manner described”;

On page eleven, subdivision 7.5.6., by striking the words “used equipment to be purchased directly” and inserting in lieu thereof the words “the purchase of used equipment directly from the vendor”;

On page eleven, subsection 7.6., by striking out the word “should” and inserting in lieu thereof the word “shall”;
On page twelve, subdivision 7.7.2., after the word “practical” by striking out the words “RFQs should” and inserting in lieu thereof the words Requests for Quotations (RFQs)shall;  

On page twelve, subdivision 7.7.3., line four, by striking out the word “shall” and inserting in lieu thereof the word “may”;  

On page twelve, paragraph 7.9.1.(a), by striking out the words “agencies of the federal government, agencies of other states, other public bodies or other state agencies” and inserting in lieu thereof the words “other public agencies and entities”;  

On page twelve, paragraph 7.9.1.(a), after the word “comparison” by striking out the word “shall” and inserting in lieu thereof the word “may”;  

On page twelve, paragraph 7.9.1.(a), by striking out the words “Director believes the state’s” and inserting in lieu thereof the word “State’s”;  

On page twelve, paragraph 7.9.1.(b), after the word “difference” by adding the words “in price”;  

On pages twelve and thirteen, paragraph 7.9.1.(b), by striking out the words “agencies of the federal government, agencies of other states, other public bodies or other state agencies” and inserting in lieu thereof the words “other public agencies and entities”;  

On page thirteen, subdivision 7.9.2., by striking out the words “evidence and documentation as required by the Director” and inserting in lieu thereof the words “necessary evidence and documentation”;  

On page thirteen, subdivision 7.9.2., by striking out the words “only approve those requests with submitted” and inserting in lieu thereof the words “approve only those requests submitted with”;  

On page thirteen, subdivision 7.9.2., by striking out the words “by the Director”;
On page thirteen, subdivision 7.10.1., after the words “best interest of the State” by striking out the remainder of the subdivision and inserting in lieu thereof the following:

“In arriving at a determination, the Director will consider the following factors, insofar as they are applicable:

(1) The quality, availability, and reliability of the supplies, materials, equipment, or service and their adaptability to the particular use required;

(2) The ability, capacity, and skill of the bidder;

(3) The sufficiency of the bidder's financial resources;

(4) The bidder's ability to provide maintenance, repair parts, and service;

(5) The compatibility with existing equipment;

(6) The need for flexibility in evaluating new products on a large scale before becoming contractually committed for all use; and

(7) Any other relevant factors.”;

On page thirteen, subdivision 7.11.1., after the words “Purchasing Division.” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “The maximum budgeted amount may not be disclosed to any vendor prior to the bid opening and may not be changed after the bid opening.”;

On page thirteen, subdivision 7.11.2., line three, by capitalizing the word “state”;

On page fourteen, subsection 7.13., by striking out “7.13.1.”;

On page fourteen, subdivision 7.13.1, at the beginning of the first sentence, by striking out the word “The” and inserting in lieu thereof the words “For contracts for commodities and services in the amount of $1 million or less, the”;
On page fourteen, paragraphs 7.13.1.(a), by capitalizing the word “state”;

On page fourteen, after subdivision 7.13.1, by inserting a new subdivision, designated subdivision 7.13.2, to read as follows:

“7.13.2. For contracts for commodities and services in an amount exceeding $1 million, the following contract management procedures apply:

a. Post Award Conferences.

The agency administrator responsible for administering the contract shall hold a post award conference with the contractor to ensure a clear and mutual understanding of all contract terms and conditions, and the respective responsibilities of all parties. The agenda for the conference shall include, at a minimum, the introduction of all participants and identification of agency and contractor key personnel, and discussion of the following items:

1. The scope of the contract, including specifications of what the agency is buying;

2. The contract terms and conditions, particularly any special contract provisions;

3. The technical and reporting requirements of the contract;

4. The contract administration procedures, including contract monitoring and progress measurement;

5. The rights and obligations of both parties and the contractor performance evaluation procedures;

6. An explanation that the contractor will be evaluated on its performance both during and at the conclusion of the contract and that such information may be considered in the selection of future contracts;

7. Potential contract problem areas and possible solutions;
(8) Invoicing requirements and payment procedures, with particular attention to whether payment will be made according to milestones achieved by the contractor;

(9) An explanation of the limits of authority of the personnel of both the agency and the contractor.

b. Monitoring.

The agency shall develop a comprehensive and objective monitoring checklist which:

(1) Measures outcomes;

(2) Monitors compliance with contract requirements; and

(3) Assesses contractor performance.

c. Reports.

The agency shall make the following reports to the Director, on a schedule established by the Director, but not less frequently than once each year:

(1) Status Reports. Status reports describe the progress of the work; track the organizational structure of the statement of work in terms of phases, segments, deliverables and products; and describe what work is complete and what work is pending and contrast that status against the contract schedule. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status report and a resolution should be requested.

(2) Activity Reports. Activity reports describe all activity on the project, regardless of whether substantial progress has been made toward completion of the project. If payment is based on the number of completed transactions, these activities must be specifically set out in the report.”;

On page fourteen, after subsection 7.13, by inserting the following:

7.14.1. The agency shall inspect all materials, supplies, and equipment upon delivery to insure compliance with the contract requirements and specifications.

7.14.2. The agency shall report any discrepancies to the Director immediately.

7.14.3. If unlisted shortages are discovered, the vendor and the Director must be notified immediately.

7.14.4. A contractor may be required to pick up any merchandise not conforming to specifications and replace the merchandise immediately.

7.15. Substitutions.

Substitution of items called for in a contract is not permitted without the Director's prior approval. The Director will not approve substitution of items unless the substituted items are of equal quality and are offered at the same or lower price.

7.16. Cancellations.

7.16.1. The director may cancel a purchase or contract under any one of the following conditions including, but not limited to:

(a) The vendor agrees to the cancellation;

(b) The vendor has obtained the contract by fraud, collusion, conspiracy, or in conflict with any statutory or constitutional provision of the State of West Virginia;

(c) Failure to conform to contract requirements or standard commercial practices;

(d) The existence of an organizational conflict of interest is identified; or

(e) Funds are not appropriated or an appropriation is discontinued by the Legislature for the acquisition.
276 7.16.2. Notwithstanding other provisions of this
277 subdivision, the Director may cancel a purchase or contract for
278 any reason or for no reason, upon 30 days’ notice to the vendor.
279
280 7.17. Damages.
281
282 7.17.1. A vendor who fails to perform as required under a
283 contract shall be liable for actual damages and costs incurred by
284 the state.
285
286 7.17.2. If any merchandise delivered under a contract has
287 been used or consumed by an agency and on testing is found not
288 to comply with specifications, no payment may be approved by
289 the Director for the merchandise until the amount of actual
290 damages incurred has been determined.
291
292 7.17.3. The Director shall seek to collect damages by
293 following the procedures established by the Office of the
294 Attorney General for the collection of delinquent obligations.
295
296 On page 17, subsection 11.1., by capitalizing the word
297 “internet”;
298
299 And,
300
301 On page 17, after subsection 11.1, by striking out
302 subsections 11.2, 11.3, 11.4 and 11.5 in their entirety and
303 inserting in lieu thereof the following:
304
305 “11.2. The state spending unit for surplus property may
306 contract with one or more nationally recognized commercial
307 Internet auction sites to coordinate sales of surplus property,
308 pursuant to the provisions of §5A-3-45 of the West Virginia
309 Code and this rule.
310
311 11.3. To ensure that organizations eligible under Federal
312 Property Management Regulations (41 CFR Chapter 101) have
313 priority in obtaining surplus property, all surplus property will
314 be listed on the West Virginia State Agency for Surplus
315 Property website for at least five (5) working days prior to being
316 made available on an Internet auction site.”.
(b) The legislative rule filed in the State Register on the eleventh day of July, two thousand six, authorized under the authority of section forty-four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of August, two thousand six, relating to the Department of Administration (cannibalization of state property, 148 CSR 16), is authorized, with the following amendments:

On page one, by striking out subsection 1.1. in its entirety and inserting in lieu thereof the following:

"1.1. This rule explains and clarifies operative procedures for the disposal of state surplus property by cannibalization for use of component parts."

On page one, section two, lines one and two, by striking out the words "meaning as" and inserting in lieu thereof the word "meanings", by striking out "§5A-1-1" and inserting in lieu thereof "§§5A-1-1 et seq.", and by striking out "§5A-3-1 et seq., and as follows" and inserting in lieu thereof the "§§5A-3-1 et seq. In addition";

On page one, subsection 3.1., by striking out the word "legislative" and by striking out the word "State" and inserting in lieu thereof the word "state";

On pages one and two, by striking out section four in its entirety and renumbering the remaining section accordingly;

On page two, section five, by inserting a new subsection to read as follows:

"4.1. State assets shall be disposed of exclusively through the state agency for surplus property.";

On page two, section five, by redesignating subsections 5.1. through 5.6. as subsections 4.2. through 4.7.;

On page two, subdivisions 5.1.a. through 5.1.c., by inserting the word "The" before the word "commodity";
On page two, subdivision 5.1.d., by inserting the word “A” before the word “description”; 

On page two, subdivision 5.1.e., by capitalizing the word “whether”, after the word “If” by inserting the word “the”, and by striking out the words “why the agency is” and inserting in lieu thereof the word “for”; 

On page two, subdivision 5.1.f., by capitalizing the word “how”; 

On page two, subdivision 5.1.g., lines one and two, by capitalizing the word “who” and, after the word “document” by inserting a comma and the words “signed by the spending officer,”; 

On page two, subdivision 5.1.g., line three, by striking out the words “which will identify” and inserting in lieu thereof the word “identifying”; 

On page two, subdivision 5.1.g., line five, by striking out the words “qualification. This document must be signed by the spending officer.” and inserting in lieu thereof the word “qualifications”; 

On pages two and three, by striking out subsection 5.2. in its entirety and by inserting in lieu thereof the following: 

“4.2.a. If the agency plans to use the cannibalized parts immediately, it must provide the following additional information: 

4.2.a.1. Whether the part restores the commodity to an operable condition; 

4.2.a.2. If the part does not restore the property to an operable condition, additional justification for the initial cannibalization, along with the additional steps required to restore the property to an operable condition; and 

4.2.a.3. The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.
4.2.b. The agency must properly retire an inoperable part being replaced to the state agency for surplus property using the authorized means of disposal outlined in W. Va. Code §5A-3-45.

4.2.c. The Director shall make a comparison of the current value of the asset being cannibalized, the value of the property being repaired and the cost to repair the item without cannibalization. The Director will not authorize cannibalization unless the value of the repaired asset exceeds the value of the asset to be cannibalized, along with the cost of the cannibalization/repair process.”

On page three, subsection 5.3., lines one and two, after the word “future use” by changing the period to a comma, by striking out the words “justification must be submitted to and approved by” and inserting in lieu thereof the words “it must submit written justification to”;

On page three, subsection 5.3., after the word “property” by inserting the words “for approval”;

On page three, subsection 5.3. by striking out “5.3.a.” and by redesigning paragraphs 5.3.a.1. through 5.3.a.4 as subdivisions 4.3.a. through 4.3.d.;

On page three, paragraph 5.3.a.1., by striking out the words “the potential” and inserting in lieu thereof the word “The”;

On page three, paragraph 5.3.a.2. by capitalizing the word “the” at the beginning of the paragraph;

On page three, paragraph 5.3.a.3. by capitalizing the word “the” at the beginning of the paragraph and, after the word “stored;”, by inserting the word “and”;  

On page three, paragraph 5.3.a.2. by capitalizing the word “the” at the beginning of the paragraph;

On page three, subsection 5.5., lines one and two, by striking out the words “make determination” and inserting in lieu thereof the word “determine” and by capitalizing the word “state”;
On page three, paragraph 5.5.a. by striking out the word “The” and inserting in lieu thereof the words “Does the” and, after the word “cannibalized”, by inserting a question mark;

On page three, paragraph 5.5.b. by striking out the words “There is” and inserting in lieu thereof the words “Is there” and, after the word “form;”, by inserting a question mark, a semi-colon and the word “and”;

On page three, paragraph 5.5.c., by striking out the word “The” and inserting in lieu thereof the words “Does the” and by striking out the words “does not”;

On page three, paragraph 5.5.c., by capitalizing the word “state”;

On page three, paragraph 5.5.c., by striking out the word “non-used” and inserting in lieu thereof the word “unused” and by changing the period to a question mark;

And,

On page three, section 5.6, line one, after the words “review the” by inserting the word “agency”.

(c) The legislative rule filed in the State Register on the eleventh day of July, two thousand six, authorized under the authority of section forty-four, article three, chapter five-a of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of August, two thousand six, relating to the Department of Administration (waste disposal of state property, 148 CSR 17), is authorized, with the following amendments:

On page one, by striking out subsection 1.1. in its entirety and inserting in lieu thereof the following:

“1.1. This rule explains and clarifies operative procedures for the disposal of commodities as waste.”

On page one, section two, lines one and two, by striking out the words “meaning as” and inserting in lieu thereof the word
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“meanings”, by striking out “§5A-1-1” and inserting in lieu thereof “§§5A-1-1 et seq.”, and by striking out “§5A-3-1 et seq., and as follows” and inserting in lieu thereof the “§§5A-3-1 et seq. In addition”;

On page one, subsection 3.1., by striking out the word “legislative” and by striking out the word “State” and inserting in lieu thereof the word “state”;

On pages one and two, by striking out section four in its entirety and renumbering the remaining section accordingly;

On page two, section five, by inserting a new subsection to read as follows:

“4.1. State assets shall be disposed of exclusively through the state agency for surplus property.”;

On page two, section five, by redesignating subsections 5.1. through 5.8. as subsections 4.2. through 4.9.;

On page two, subsection 5.1., by striking out the word “submits” and inserting in lieu thereof the word “shall submit”;

On page two, subsection 5.2., by striking out the word “State” and inserting in lieu thereof the words “The state”; 

On page two, subsection 5.2., by striking out the word “evaluates” and inserting in lieu thereof the words “shall evaluate”;

On page two, subdivision 5.3.a., by striking out the words “If the” and inserting in lieu thereof the word “The”;

On page two, subdivision 5.3.c., by striking out the word “state” and inserting in lieu thereof the word “State”;

On page two, subsection 5.4., by striking out “5.4.a.” and by redesignating paragraphs 5.4.a.1. through 5.4.a.3. as subdivisions 4.5.a. through 4.5.c.;

On page two, subsection 5.5., after the words “completed and” by striking out the words “a physical inspection conducted
(if necessary), a determination is made by” and inserting in lieu thereof a comma and the words “if necessary, a physical inspection conducted.”;

On page two, subsection 5.5., after the words “surplus property” by striking out the words “as to” and inserting in lieu thereof the words “shall determine”;

On page two, subsection 5.6., after the words “using any other” by striking out the words “approved method, in accordance with §5A–3-45 of the West Virginia Code” and inserting in lieu thereof the words “method approved by W. Va. Code §5A-3-45”;

On page two, subsection 5.7., line one, by striking out the word “with” and inserting in lieu thereof the word “within”; And,

On page two, subsection 5.7., by striking out the words “shall be” and inserting in lieu thereof the word “are”.

(d) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section fourteen, article four, chapter twelve of this code, modified by the Department of Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of November, two thousand six, relating to the Department of Administration (accountability of state funds and grants, 148 CSR 18), is authorized, with the following amendments:

On page one, subsection 1.1., after the word “Scope. –“ by inserting the following: “This rule establishes standards and procedures for recipients of state funds and grants to account for the manner in which those funds are spent.”;

On page one, section two, after the caption, by striking out “2.1.” and by redesignating subdivisions 2.1.a. through 2.1.h. as subdivisions 2.1. through 2.8.;
On page one, subdivision 2.1.a., line two, by striking out the words “engagement performed by” and inserting in lieu thereof the words “agreement between a grantee and”; 

On page one, subdivision 2.1.b., line two, by striking out the words “engagement performed by” and inserting in lieu thereof the words “agreement between a grantee and”; 

On page one, subdivision 2.1.g., line one, by striking out the words “engagement performed by” and inserting in lieu thereof the words “agreement between a grantee and”; 

On page one, subdivision 2.1.g., lines seven and eight, by striking out the words “be in accordance with compliance attestation standards” and inserting in lieu thereof the words “comply with Compliance Attestation Standards”; 

On page one, subdivision 2.1.g., line thirteen, after the word “purpose.” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “Under specified circumstances, described in section 4 of this rule, certain types of independent audits may be substituted for the required report.”; 

On page one, subdivision 2.1.h., line seven, by striking out the words “shall means” and inserting in lieu thereof the word “means”; 

On page two, paragraph 2.1.h.(J)., after the words “pursuant to” by striking out the remainder of the paragraph and inserting in lieu thereof the following: W. Va. Code §33-3-14d, §33-3-33, and §33-12C-7.”; 

On page two, subsection 3.1., by striking out the word “state’s” and inserting in lieu thereof the word “state”; 

On page two, subsection 3.1., by striking out the words “the disbursement of the state grant funds” and inserting in lieu thereof the words “how the state grant funds were disbursed”; 

On page two, subsection 3.2., by striking out the words “The requirement for a report of the disbursement of state grant funds may be satisfied” and inserting in lieu thereof the words
“A grantee may satisfy the report requirement of subsection 3.1. of this rule”;

On page two, by striking out subsection 3.3. in its entirety and redesignating the remaining subsections accordingly;

On page two, subsection 3.4., after the word “Reports” by inserting the words “required by this section”;

On page two, subsection 3.4., by striking out the words “a minimum” and inserting in lieu thereof the word “least”;

On page two, subsection 3.5., by striking out the words “and if” and inserting in lieu thereof the words “the expenditure and if the expenditure is”;

On page two, subsection 3.6., by striking out the words “In the event that” and inserting in lieu thereof the word “If”; On page two, subsection 3.6., by striking out the word “such” and inserting in lieu thereof the word “the”;

On page two, by striking out subsection 3.7. in its entirety and inserting in lieu thereof the following:

“3.7. The grantee shall submit the required report within two years after the end of the fiscal year in which the grantor disbursed state grants to the grantee. If the grantee’s fiscal year end is different from the State’s fiscal year end (June 30), the grantee shall file the report within two years after the end of its fiscal year following the state fiscal year in which the funds were disbursed.”;

On page three, subsection 3.9., by striking out the word “such” and inserting in lieu thereof the word “the”;

On page three, subsection 4.1., by striking out the word “An” and inserting in lieu thereof the words “In lieu of the required report, the grantee may submit an”;

On page three, subsection 4.1., by striking out the words “may be submitted in lieu of the required report if said audit” and inserting in lieu thereof the words “which”;

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On page three, subsection 4.1., line eight, after the word “and” by inserting the word “a” and by striking out the word “said” and inserting in lieu thereof the word “the”;

On page three, by striking out subsection 4.2. in its entirety and by inserting in lieu thereof the following:

“4.2. In lieu of the required report, the grantee may submit a financial audit, performed by an independent CPA, which complies with Government Auditing Standards issued by the Comptroller General of the United States if the audit includes a schedule of state grant receipts and expenditures and a related auditor’s opinion on whether the schedule is fairly stated in relation to the financial statements taken as a whole.”;

On page three, subsection 5.1., by striking out the words “due to the fact that” and inserting in lieu thereof the word “because”;

On page three, subsection 5.1., by striking out the words “generally accepted government auditing standards” and inserting in lieu thereof the words “Government Auditing Standards”;

On page three, subsection 5.1., by striking out the words “due to the fact that an audit is performed that complies” and inserting in lieu thereof the words “because an audit complying”;

On page three, subsection 5.1., after the word “A-133” by striking out the word “which”;

On page three, subsection 5.1., after the words “The form” by striking out the word “should” and inserting in lieu thereof the word “shall”;

On page three, subsection 5.2., by striking out the words “shall rest” and inserting in lieu thereof the word “rests”;

On page three, subsection 5.3., by striking out the words “All sworn statements” and inserting in lieu thereof the words “A sworn statement”;
On page three, subsection 5.3., after the word “include” by striking out the comma and the words “at a minimum,” and inserting in lieu thereof the words “at least”;

On page three, subsection 5.4., by striking out the words “following language shall be utilized for the actual” and, after the word “statement” by inserting the words “shall be in the following form”;

On page three, subsection 5.4., by striking out “5.4.1”;

On page four, subsection 5.5., line one, after the word “representative” by inserting the words “of the grantee”;

On page four, subsection 5.5., after the words “and provide” by striking out the word “their” and inserting in lieu thereof the words “his or her”;

On page four, subsection 5.5., after the word “grantor” by striking out the words “of the State grants”;

On page four, subsection 5.5., line twelve, by striking out the word “Said” and inserting in lieu thereof the word “The”;

On page four, by striking out subsection 5.6. in its entirety and inserting in lieu thereof the following:

“5.6. The grantee shall submit the sworn statement of expenditures within two years after the end of the fiscal year in which the grantor disbursed state grants to the grantee. If the grantee’s fiscal year end is different from the State’s fiscal year end (June 30), the grantee shall file the report within two years after the end of its fiscal year following the state fiscal year in which the funds were disbursed.”;

On page four, subsection 6.1., after the word “expenditures” by inserting the words “for state grants disbursed after July 1, 2003”;

On page four, subsection 6.1., after the words “required time” by striking out the words “period for state grants disbursed by the grantor after July 1, 2003”;
On page four, subsection 6.1., after the words “grantee complies with” by striking out the word “said” and inserting in lieu thereof the word “its”;

On page four, subsection 6.2., by striking out the words “that provided the state grant”; 

On page four, subsection 6.3., by striking out the words “that provided the state grant” and by striking out the words “The debarment process shall consist of the following:”;

On page four, subdivision 6.3.1., after the words “a grantee” by striking out the word “shall” and inserting in lieu thereof the word “should”; 

On page four, subdivision 6.3.1., after the words “certified mail,” by striking out the remainder of the subdivision and inserting in lieu thereof the following: “return receipt requested, of the reasons and the causes relied upon for the proposed debarment”;

On page four, by striking out subdivisions 6.3.2. and 6.3.3. in their entirety and inserting in lieu thereof the following:

“6.3.2. If the grantee disputes the proposed debarment, it must submit its argument to the grantor in writing within 30 calendar days after receipt of the notice.

6.3.3. If a grantee contests the debarment decision, the grantor shall decide the matter in accordance with the provisions of W. Va. Code §29A-5-1 et seq.”

On page four, subdivision 6.3.4., by striking out the words “shall be” and inserting in lieu thereof the word “is”;

On page four, subsection 6.5., line one, by striking out the word “their” and inserting in lieu thereof the word “its”;

On page four, subsection 6.5., line three, by striking out the word “for” and inserting in lieu thereof the words “with regard to”;

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On page four, subsection 6.5., line four, after the word "grants" by striking out the remainder of the subsection and inserting in lieu thereof the following: "from either the same state spending unit or from a different one.";

On page five, subsection 6.7., by striking out the words "Prior to any grantor providing State grants to a person" and inserting in lieu thereof the words "Before disbursing a state grant";

On page five, subsection 6.7., line three, by striking out the word "from" and inserting in lieu thereof the word "with";

On page five, subsection 7.1., by striking out the words "that provides State grants";

On page five, subdivision 7.2.1., line three, by striking out the word "this" and inserting in lieu thereof the words "the notification";

On page five, subdivision 7.2.1., by striking out the words "to convey the reporting requirements under W. Va. Code §12-4-14";

On page five, subsection 7.3., after the word "expenditures" by striking out the remainder of the subsection and inserting in lieu thereof the following: "for a state grant disbursed after July 1, 2003, within the required time."

On page five, subsection 7.4., by striking out the words "shall begin" and inserting in lieu thereof the word "begins" and by striking out the words "these rules" and inserting in lieu thereof the words "this rule";

On page five, subsection 7.5., lines two and three, by striking out the words "the requirements of";

On page five, subsection 7.5., lines thirteen and fourteen, by striking out the words "by the grantor";

On page five, subsection 8.1., by striking out the words "Prior to" and inserting in lieu thereof the word "Before";

(a) The legislative rule filed in the State Register on the twelfth day of July, two thousand six, authorized under the authority of section one, article ten-d, chapter five of this code,
modified by the Consolidated Public Retirement Board to meet
the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the nineteenth
day of September, two thousand six, relating to the
Consolidated Public Retirement Board (deputy sheriff
retirement system, 162 CSR 10), is authorized.

(b) The legislative rule filed in the State Register on the
twelfth day of July, two thousand six, authorized under the
authority of section one, article ten-d, chapter five of this code,
relating to the Consolidated Public Retirement Board (teachers
defined contribution system, 162 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the
twelfth day of July, two thousand six, authorized under the
authority of section one, article ten-d, chapter five of this code,
relating to the Consolidated Public Retirement Board (teachers
retirement system, 162 CSR 4), is authorized.

(d) The legislative rule filed in the State Register on the
twelfth day of July, two thousand six, authorized under the
authority of section one, article ten-d, chapter five of this code,
modified by the Consolidated Public Retirement Board to meet
the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the nineteenth
day of September, two thousand six, relating to the
Consolidated Public Retirement Board (public employees
retirement system, 162 CSR 5), is authorized.

(e) The legislative rule filed in the State Register on the
twelfth day of July, two thousand six, authorized under the
authority of section one, article ten-d, chapter five of this code,
modified by the Consolidated Public Retirement Board to meet
the objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the nineteenth
day of September, two thousand six, relating to the
Consolidated Public Retirement Board (refund, reinstatement
and loan interest factors, 162 CSR 7), is authorized.

(a) The legislative rule filed in the State Register on the twenty-first day of July, two thousand six, authorized under the authority of section ten, article six, chapter twenty-nine of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the thirtieth day of November, two thousand six, relating to the Division of Personnel (administrative rule of the West Virginia Division of Personnel, 143 CSR 1), is authorized with the following amendments:

On page seven, subsection 3.88., after the words “not to exceed” by striking out the number “1,000" and inserting in lieu thereof the number “720";

On page twenty-one, subsection 9.4., after the words “not to exceed” by striking out the number “1,000" and inserting in lieu thereof the number “720";

On page twenty-two, subsection 9.5., by striking subsection (e) in its entirety and by redesignating the remaining subsections accordingly;

On page thirty-nine, section nineteen, before the word “Each” by adding “19.1.”;

And,

On page thirty-nine, section nineteen, by adding a new subsection, designated subsection 19.2. to read as the follows:

19.2. Neither this section nor any other provision of this rule shall interfere with the right of the Legislature, its committees, administrative units and staff to have access to agency personnel records under the common law, or pursuant to the provisions of W. Va. Code §§4-2-5, 4-3-4, 4-5-3, 4-10-5, or any other statutory provision giving a legislative agency or subunit access
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The legislature, its committees, administrative units and staff having access to these records shall maintain the confidentiality of the records, to the extent reasonably possible.

(b) The legislative rule filed in the State Register on the twenty-first day of July, two thousand six, authorized under the authority of section four, article five-a, chapter twenty-three and section ten, article six, chapter twenty-nine of this code, relating to the Division of Personnel (workers’ compensation temporary total disability, 143 CSR 3), is authorized.

(c) The legislative rule filed in the State Register on the seventeenth day of February, two thousand six, authorized under the authority of section seven, article two, chapter five-f of this code, modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-first day of November, two thousand six, relating to the Division of Personnel (interdepartmental transfer of permanent state employees, 143 CSR 7), is authorized.


The legislative rule filed in the State Register on the twenty-first day of July, two thousand six, authorized under the authority of section fifteen, article thirty, chapter thirty-three of this code, modified by the Board of Risk and Insurance Management to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of November, two thousand six, relating to the Board of Risk and Insurance Management (mine subsidence insurance, 115 CSR 1), is authorized.
AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the Department of Education and the Arts; 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 the Library Commission to promulgate a legislative rule relating to the Library Commission administrative rule; authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to case services; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to resources manual.

Be it enacted by the Legislature of West Virginia:

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-1. Library Commission.
§64-4-2. Division of Rehabilitation Services.
§64-4-1. Library Commission.

1 The legislative rule filed in the State Register on the twenty-third day of May, two thousand six, authorized under the authority of section twenty, article one, chapter ten of this code, modified by the Library Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixteenth day of January, two thousand seven, relating to the Library Commission (Library Commission administrative rule, 173 CSR 1) is authorized with the following amendments:

10 On page 4, by striking the section heading and inserting the following, “§ 173-1-3 Requirements for Receiving Grants.”; and

13 On page 4, following the section heading for section 173-1-3 by inserting a new subsection designated as 3.1, to read as follows: “3.1 A public library must fulfill all of the requirements set forth in this section to be eligible to receive a grant from the library commission.” and renumbering the remaining subsections accordingly;

and,

20 On page 7, subsection 5.2, by striking the subsection in its entirety and inserting in lieu thereof the following:

5.2 The eligibility requirements contained in section 3 of this rule may be waived if the Commission determines that due to exceptional or uncontrollable circumstances, one or more of the requirements for receiving grants contained in section 3 would impose an undue hardship on a public library. For the purposes of this subsection, exceptional or uncontrollable circumstances may include, but are not limited to, a natural or man-made disaster or a governing authority’s lack of financial resources to provide adequate local funding to support a public library’s operations.
On page 8, subsection 5.2, by striking the last sentence of the subsection;

and,

On page 8 following subsection 5.4, by inserting a new subsection designated as 5.5 to read as follows: “5.5 The provisions of this rule shall be liberally construed to accomplish its objectives and purposes.”

On page 8, subsection 6.2, by striking the word, “may” and inserting the word, “shall” and by striking the word, “only”;

and,

On page 13, subsection 9.1, after the word, “library” by inserting the word, “shall”.

§64-4-2. Division of Rehabilitation Services.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section three, article ten-a, chapter eighteen of this code relating to authorizing the Division of Rehabilitation Services (case services, 130 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section three, article ten-a, chapter eighteen of this code relating to the Division of Rehabilitation Services (resources manual, 130 CSR 2) is authorized.
AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, 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 Department of Health and Human Resources; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing Health Care Authority to promulgate a legislative rule relating to certificates of need; authorizing Health Care Authority to promulgate a legislative rule relating to health services offered by health professionals; 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 public water system operators; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; authorizing Department of Health and
Human Resources to promulgate a legislative rule relating to recreational water facilities; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing Division of Human Services to promulgate a legislative rule relating to child care center licensing; authorizing Division of Human Services to promulgate a legislative rule relating to child-placing agencies’ licensure; authorizing Division of Human Services to promulgate a legislative rule relating to minimum licensing requirements for group residential facilities in West Virginia; authorizing Division of Human Services to promulgate a legislative rule relating to family child care facility licensing requirements; authorizing Division of Human Services to promulgate a legislative rule relating to family child care home registration requirements; and authorizing Division of Human Services to promulgate a legislative rule relating to informal and relative family child care home registration requirements.

Be it enacted by the Legislature of West Virginia:

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

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

§64-5-1. Health Care Authority.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section eight, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth
day of January, two thousand seven, relating to the Health Care Authority (certificate of need, 65 CSR 7) is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section eight, article two-d, chapter sixteen of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of January, two thousand seven, relating to the Health Care Authority (health services offered by health professionals, 65 CSR 17) is authorized with the following amendments:

On page one, subsection 1.2., by striking out “@” and inserting in lieu thereof “c”; 

On page one, section two, by striking subdivision 2.1.c. in its entirety and inserting in lieu thereof the following:

“2.1.c. Any facility owned or operated by one or more health professionals licensed, authorized, or organized pursuant to Chapter 30 of the West Virginia Code which offers laboratory or imaging services to patients that are sent by other licensed health care professionals for the sole purpose of obtaining the laboratory or imaging services, regardless of the cost associated with the proposal. A facility shall not be deemed a diagnostic center under subsection 2.1.c. if the proportion of laboratory procedures performed on such patients does not exceed 25% of the total laboratory procedures performed by the facility, and the proportion of imaging procedures performed on such patients does not exceed 25% of the total imaging procedures performed by the facility;”;

On page two, paragraph 2.1.g.l., after the words “first offered;” by striking out the word “or”; 

And,
On page two, paragraph 2.1.g.2., by changing the period to a semi-colon and inserting the word “or” and the following:

“2.1.g.3. Such laboratory or imaging services were offered by the private office practice on the effective date of this rule; provided however, that the number of laboratory or imaging procedures performed on patients who are sent to the private office practice subsequent to the effective date of this rule for the sole purpose of obtaining laboratory or imaging services must remain at or below the level performed on such patients in 2006, or the level established by calculating an annual average based upon calendar years 2004 through 2006, inclusive.”.

§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article one, chapter sixteen of this code relating to the Department of Health and Human Resources (public water systems, 64 CSR 3) is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 six, relating to the Department of Health and Human Resources (public water system operators, 64 CSR 4) is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, 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 nineteenth day of December, two thousand six, relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13) is authorized.
(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 six, relating to the Department of Health and Human Resources (recreational water facilities, 64 CSR 16) is authorized with the following amendments:

On page four, section six, by striking out all of subsection 6.1. and inserting in lieu thereof a new subsection 6.1., to read as follows:


And,

On page nine, section ten, by striking out all of subdivision 10.12.a. and inserting in lieu thereof a new subdivision 10.12.a., to read as follows:

(e) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section three, article five, 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 January, two thousand seven, relating to the Department of Health and Human Resources (vital statistics, 64 CSR 32) is authorized.

(f) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section fourteen, article four-c, 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 six, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48) is authorized with the following amendments:

On page forty-eight, section eighteen, subsection 18.6, line thirty-nine, following the word “of”, by inserting the words “Examiners for”;

On page forty-eight, section eighteen, subsection 18.7, line forty-three, following the word “or” by inserting the words “Examiners for”;

And,

On page forty-eight, section eighteen, subsection 18.7, line forty-three, following the word “Nurses” by inserting the words “or his or her designee”.

§64-5-3 Division of Human Services.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand six, relating to the Division of...
Human Services (child care center licensing, 78 CSR 1) is authorized with the following amendments:

On page eleven, subsection 4.6, by striking out “4.6.a.” and by redesignating paragraphs 4.6.a.1. through 4.6.a.3. as subdivisions 4.6.a. through 4.6.c.;

On page twenty, subdivision 8.4.c., by striking out “8.4.d.” and inserting in lieu thereof “8.4.e.”;

On page sixty-eight, subsection 19.11, by striking out “19.11.a.” and by redesignating paragraphs 19.11.a.1. through 19.11.a.4. as subdivisions 19.11.a. through 19.11.d.;

And,

On page seventy-three, section twenty-two, by striking out “22.1.” and by redesignating subdivisions 22.1.a. through 22.1.h. as subdivisions 22.1 through 22.8.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of November, two thousand six, relating to the Division of Human Services (child placing agencies’ licensure, 78 CSR 2) is authorized with the following amendments:

On page six, subsection 4.4., by striking out “4.4.a.”;

On page seven, subsection 4.5., by striking out “4.5.a.”;

On page seven, subsection 4.7., by striking out “4.7.1.”;

On page eighteen, subdivision 8.1.d., by striking out “8.1.d.1.”;

On page twenty-four, subdivision 9.6.1., by striking out “9.6.a.1.”;

On page twenty-eight, subsection 10.6., by striking out “10.6.a.”;

On page thirty-nine, section seventeen, by striking out “17.1.” and by redesignating subdivisions 17.1.a. through 17.1.c as subdivisions 17.1 through 17.3;

On page forty, section eighteen, by striking out “18.1.”;
On pages fifty and fifty-one, section twenty-six, by striking out "26.1." and by redesignating subdivisions 26.1.a. through 26.1.c. as subdivisions 26.1. through 26.3.;

And,

On page fifty-one, section twenty-seven, by striking out "27.1."

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services 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 six, relating to the Division of Human Services (minimum licensing requirements for group residential facilities in West Virginia, 78 CSR 3) is authorized with the following amendments:

On page two, subsection 2.2, by striking out "2.2.a.";

On pages two and three, subsection 2.3., by striking out "2.3.a." and by redesignating paragraphs 2.3.a.1. through 2.3.6. as subdivisions 2.3.a. through 2.3.f.;

On page seventeen, subsection 4.11., by striking out "4.11.a.";

On page seventeen, subsection 4.12., by striking out "4.12.a.";

On pages twenty-two and twenty-three, subsection 5.8., by striking out "5.8.a." and by redesignating paragraphs 5.8.a.1. through 5.8.4. as subdivisions 5.8.a. through 5.8.d.;

On page twenty-three, subsection 5.10., by striking out "5.10.a.";

On pages twenty-six and twenty-seven, subsection 7.1., by striking out "7.1.a." and by redesignating paragraphs 7.1.a.1. through 7.1.a.5. as subdivisions 7.1.a. through 7.1.e.;

On pages twenty-nine and thirty, subsection 7.9., by striking out "7.9.a." and by redesignating paragraphs 7.9.a.1. through 7.9.a.11. as subdivisions 7.9.a. through 7.9.k.;
On page thirty, subsection 8.5., by striking out “8.5.a.”;
On page thirty-two, section eight, by striking paragraph 8.7.c.10 in its entirety and inserting in lieu thereof the following:
“8.7.c.10. Expected outcomes as appropriate.”;
On page thirty-two, section eight, by striking paragraphs 8.7.d.4 through 8.7.d.9 in their entirety and inserting in lieu thereof the following:
“8.7.d.4. Evidence of ability to conduct business in the State of West Virginia; and
8.7.d.5. Evidence of a criminal background check.”;
On page forty-two, section eleven, by striking paragraph 11.2.a.3. in its entirety and inserting in lieu thereof the following:
“11.2.a.3. Adult Pulmonary Resuscitation (CPR), unless the organization serves an infant population, in which case both adult and infant cardiopulmonary resuscitation training is required. This training must be updated every two years.”;
On page forty-three, section eleven, by striking paragraph 11.2.a.14. in its entirety and inserting in lieu thereof the following:
“11.2.a.14. Heimlich’s maneuver or abdominal thrust or any other life-saving technique for choking/obstructed airway as recognized by the American Red Cross or equivalent.”;
On page fifty-four, subsection 13.1, by striking out “13.1.a.”;
On page fifty-four, subsection 13.2., by striking out “13.2.a.” and by redesignating paragraph 13.2.a.1. as subdivision 13.a.;
On page sixty, subsection 13.6., by striking out “13.6.a.”;
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112 On page sixty-one, subsection 14.3., by striking out “14.3.a.” and by redesignating paragraphs 14.3.a.1. through 14.3.a.4. as subdivisions 14.3.a. through 14.3.d.;

115 On page sixty-seven, subsection 14.6., by striking out “14.6.a.”;

118 On page sixty-nine, subsection 14.8., by striking out “14.8.a.”;

121 On page seventy-two, subsection 14.13., by striking out “14.13.a.”;


127 On page eighty-two, subdivision 15.4.h., by redesignating paragraphs 15.4.g.1. through 15.4.g.3 as 15.4.h.1. through 15.4.h.3. and by redesignating the second subdivision 15.4.h. as 15.4.i.;

130 On page eighty-six, subdivision 16.4., by striking out “16.4.a.”;

133 On pages ninety-one and ninety-two, subsection 18.2, by striking out “18.2.a.”, by redesignating subdivisions 18.2.a.1. through 18.2.a.5. as subdivisions 18.2.a. through 18.2.e. and by redesignating subparagraph 18.2.a.5.A. through 18.2.a.5.B. as paragraphs 18.2.e.1. though 18.2.e.5.;

136 On page ninety-two, subsection 18.3., by striking out “18.3.a.”;

139 On page ninety-four, subsection 18.6., by striking out “18.6.a.”;

142 On page ninety-five, subsection 18.7., by striking out “18.7.a.” and by redesignating paragraphs 18.7.a.1. through 18.7.a.4. as subdivisions 18.7.a. through 18.7.d.;

On page one hundred six, subsection 20.5., by striking out “20.5.a. Abrogation of Client Rights” and “20.5.a.1.”;

On page one hundred seven, subsection 21.1., by striking out “21.1.a.”;

On page one hundred seven, subsection 22.1., by striking out “22.1.a”;

On page one hundred eight, subsection 22.2, by striking out “22.1.a”;

On page one hundred nine, subsection 22.5, by striking out “22.5.a” and by redesignating paragraphs 22.5.a.1. through 22.5.a.4. as subdivisions 22.5.a. through 22.5.d.;

On page one hundred eleven, subsection 22.8, by striking out “22.8.a”;

And,

On page one hundred twelve, subsection 22.10, by striking out “22.10.a”.

(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of January, two thousand seven, relating to the Division of Human Services (family child care facility licensing requirements, 78 CSR 18) is authorized with the following amendments:

On pages four and five, subsection 4.3., by striking out “4.3.a.” and by redesignating paragraphs 4.3.a.1. through 4.3.a.4. as subdivisions 4.3.a. through 4.3.d.;

On page twelve, subsection 8.1., by striking out “8.1.a.”, by redesignating paragraphs 8.1.a.1. through 8.1.a.4. as subdivisions 8.1. through 8.4. and by redesignating
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subparagraphs 8.1.a.4.a. through 8.1.a.4.d. as paragraphs 8.4.a. through 8.4.d.;


On page twenty-eight, subsection 18.3., by striking out "18.3.a." and by designating paragraphs 18.3.a.1. through 18.3.a.7. as subdivisions 18.3.a. through 18.3.g.;

And,

On page thirty-four, section twenty-four, by striking out "24.1."

(e) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the sixth day of December, two thousand six, relating to the Division of Human Services (family child care home registration requirements, 78 CSR 19) is authorized with the following amendments:

On page thirteen, subsection 7.3, by striking out "7.3.a." and by redesignating paragraphs 7.3.a.1. through 7.3.a.5. as subdivisions 7.3.a. through 7.3.e.;

On page eighteen, section ten, subsection 10.1.d.1, line eleven, following the numeral "6", by inserting the word "months";

On page twenty-three, subsection 12.2., by striking out "12.2.a." and by redesignating paragraphs 12.2.a.1. through 12.2.a.10. as subdivisions 12.2.a. through 12.2.j.;

On pages twenty-six and twenty-seven, subsection 16.1., by striking out "16.1.a." and by redesignating paragraphs
On page twenty-seven, subsection 16.2., by striking out “16.2.a.” and by redesignating paragraphs 16.2.a.1. through 16.2.a.7. as subdivisions 16.2.a. through 16.2.g.;

On page twenty-eight, subsection 17.1., by striking out “17.1.a.” and by redesignating paragraphs 17.1.a.1. through 17.1.a.7. as subdivisions 17.1.a. through 17.1.d.;

On pages twenty-eight and twenty-nine, subsection 17.2., by striking out “17.2.a.” and by redesignating paragraphs 17.2.a.1. through 17.2.a.6. as subdivisions 17.2.a. through 17.2.f.;

And,

On page thirty, section twenty, by striking out “20.1.”

(f) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter forty-nine of this code, modified by the Division of Human Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-second day of January, two thousand seven, relating to the Division of Human Services (informal and relative family child care home registration requirements, 78 CSR 20) is authorized with the following amendments:

On pages nine and ten, subsection 7.4., by striking out “7.4.a.” and by redesignating paragraphs 7.4.a.1. and 7.4.a.2. as subdivisions 7.4.a. and 7.4.b.;

On page ten, subsection 7.5., by striking out “7.5.a.” and by redesignating paragraphs 7.5.a.1. and 7.5.a.2 as subdivisions 7.5.a. and 7.5.b.;

On page fourteen, section twelve, by striking out “12.1. General Transportation.”, by redesignating subdivisions 12.1.a. and 12.1.b. as subsections 12.1. and 12.2. and by
AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, 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 Department of Military Affairs and Public Safety; 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 Division of Corrections to promulgate a legislative rule relating to parole supervision; authorizing State Fire Commission to promulgate a legislative
rule relating to the State Building Code; authorizing State Fire Commission to promulgate legislative rule relating to certification and evaluation of local fire departments; authorizing Division of Homeland Security and Emergency Management to promulgate legislative rule relating to mine and industrial accident rapid response system; authorizing Regional Jail and Correctional Facility Authority to promulgate legislative rule relating to criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails and operated by authority; and authorizing State Police to promulgate a legislative rule relating to the West Virginia DNA Data Bank.

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 THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Division of Corrections.

§64-6-2. State Fire Commission.


§64-6-4. Regional Jail and Correctional Facility Authority.

§64-6-5. State Police.

§64-6-1. Division of Corrections.

1 The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section two, article thirteen, chapter sixty-two of this code relating to the Division of Corrections (parole supervision, 90 CSR 2) is authorized with the following amendments:

7 On page one, section two, by striking out “2.1.”;
On pages one and two, section two, by redesignating subdivisions a. through r. as subdivisions 2.1. through 2.18;

On page two, subdivision 2.1.r., line four, after the word "jurisdictions," by striking out the word "you" and inserting in lieu thereof the words "the parolee";

On page two, section four, by striking out "4.1."

And,

On pages two and three, section four, by redesignating subdivisions a. through e. as subdivisions 4.1. through 4.5.

§64-6-2. State Fire Commission.

(a) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section five-b, article three, chapter twenty-nine of this code relating to the State Fire Commission (State Building Code, 87 CSR 4) is authorized.

(b) The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, 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 six, relating to the State Fire Commission (certification and evaluation of local fire departments, 87 CSR 6) is authorized with the following amendments:

On page four, by striking out subsection 5.2 in its entirety and by renumbering the remaining subsections accordingly;

and

On page nine, subdivision 10.2.f., following the word "subsection" by striking out "3.3" and inserting in lieu thereof "3.2"; and
22 On page twelve, subsection 12.3, line eight, following the word “subdivision”, by striking out “10.2.b” and inserting in lieu thereof “10.3.b”.


The legislative rule filed in the State Register on the first day of May, two thousand six, authorized under the authority of section five, article five-b, chapter fifteen of this code, modified by the Division of Homeland Security and Emergency Management to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the nineteenth day of January, two thousand seven, relating to the Division of Homeland Security and Emergency Management (mine and industrial accident rapid response system, 170 CSR 1) is authorized with the following amendments:

12 On page one, subsection 1.1, line one, by striking out the word “coordinating” and inserting in lieu thereof the words “to coordinate”;

15 On page one, subsection 1.1, lines two through four, by striking out the word “governing” and inserting in lieu thereof the words “to govern”;

18 On page two, subsection 2.2., line one, after the word “means”, by inserting the words “Mine and Industrial Accident Emergency Operations Center, including”;

21 On pages two and three, by striking out subsections 2.6., 2.7. and 2.8. in their entirety;

23 On page three, by striking out section three in its entirety and by renumbering the following sections accordingly;

25 On page three, subsection 4.1., line three, by capitalizing the word “director”;

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On page three, subsection 4.2., line two, by striking out the word “Such”, by capitalizing the word “recording” and by inserting a comma after the word “automatic”;

On page three, subsection 4.2., lines three and four, by striking out the words “to include” and inserting in lieu thereof the word “including” and by striking out the words “appropriate, approved and authorized”;

On page three, subsection 4.2., line four, after the words “representative of” by inserting the word “a”, by striking out the words “regulatory, enforcement, or investigative agencies” and inserting in lieu thereof the words “government agency responsible for enforcing rules and regulations and investigating violations relating to mining and industrial safety”;

On page three, subsection 4.2., line five, by striking out the words “Such requests” and inserting in lieu thereof the words “The request”, by striking out the words “the nature of the need for such” and inserting in lieu thereof the words “why the” and, after the word “information”, by inserting the words “is needed”;

On page three, subsection 5.1., line one, by striking out the words “shall be” and inserting in lieu thereof the word “is”;

On page three, subsection 5.1., line two, by striking out the word “purposes” and inserting in lieu thereof the word “purpose” and after “§29B-1” by inserting “-1”;

On page four, by striking out subsection 5.2. in its entirety and by renumbering the remaining subsections accordingly;

On page four, subsection 5.3., by striking out the word “should” and inserting in lieu thereof the word “must”;

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On page four, subsection 5.4., after “W. Va. Code §29B-59 1” by inserting “-1” and, after the words “et seq.” by striking out the remainder of the subsection;

On page four, subsection 6.1., after the word “considered”, by striking out the word “a” and, after the word “requests” by inserting the words “in writing”;

And,

On page four, by striking out subsection 6.2. in its entirety and renumbering the remaining subsection accordingly.

§64-6-4. Regional Jail and Correctional Facility Authority.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section ten, article twenty, chapter thirty-one of this code, modified by the Regional Jail and Correctional Facility Authority 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 seven, relating to the Regional Jail and Correctional Facility Authority (criteria and procedures for determination of projected cost per day for inmates incarcerated in regional jails operated by the Authority, 94 CSR 7) is authorized with the following amendments:

On page one, subsection 2.1., line one, by striking out “establishes” and inserting in lieu thereof “shall establish”;

On page one, subsection 2.1., line three, after the word “including”, by inserting a comma;
On page one, subsection 2.1, line six, after the period by inserting the following:

“Provided, that an operational reserve fund may not exceed the amount of three months of anticipated operational expenditures.”

On page one, section three, by striking out “3.1.”;

On page one, section three, line two, after the word “entity” by inserting the words “who has or may have” and, after the word “inmate”, by striking out the words “may be”;

On page one, subsection 4.1., after the word “Authority”, by striking out the word “prepares” and inserting in lieu thereof the words “shall prepare”, after the word “statement” by changing the period to a comma and striking out the words “This statement” and inserting in lieu thereof the word “which”, and, after the word “at”, by inserting the word “a”;

And,

On page one, subsection 4.1, line three, after the word “charges”, by inserting the words “per entity”.

§64-6-5. State Police.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article two-b, chapter fifteen of this code, modified by the State Police to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of October, two thousand six, relating to the State Police (West Virginia DNA Data Bank, 81 CSR 9) is authorized.
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 Alcoholic Beverage Control Commission to promulgate a legislative rule relating to private club licensing; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to licensing of retail liquor stores; authorizing the Alcoholic Beverage Control Commission to promulgate a legislative rule relating to nonintoxicating beer licensing & operations procedures; authorizing the Insurance Commissioner to promulgate a legislative rule relating to rate
filing requirements for title insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to individual limited health benefit plans; authorizing the Insurance Commissioner to promulgate a legislative rule relating to group limited health benefit plans; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Tax Commissioner to promulgate a legislative rule relating to abusive tax shelters; and authorizing the Tax Commissioner to promulgate a legislative rule relating to consumers sales & service tax & use tax - reduced sales tax on food.

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 THE DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol Beverage Control Commission.
§64-7-2. Insurance Commissioner.
§64-7-3. Racing Commission.
§64-7-4. Tax Department.

§64-7-1. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand six, authorized under the authority of section ten, article seven, chapter sixty, of this code, relating to the Alcohol Beverage Control Commission (private club licensing, 175 CSR 2), is authorized with the following amendment:

On page one, by redesignating subdivision 2.5.1. as subsection 2.6. and renumbering the remaining subsections accordingly;
On page fifteen, subdivision 6.7.1., after the word "effect" by striking out the comma and the word "and";

And,

On page fifteen, subdivision 6.7.2. following the word "rule" by inserting a comma and the following: "and

6.7.3. A suspension order suspending a license in the interest of public safety, as specified in W. Va. Code §60-7-13a”.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article three-A, chapter sixty, of this code, relating to the Alcohol Beverage Control Commission (licensing of retail liquor stores, 175 CSR 5), is authorized, with the following amendment:

On page fifteen, by redesignating paragraph 8.1.1.a. as subdivision 8.1.2. and by renumbering the remaining subdivision accordingly;

And,

On page fifteen, subdivision 8.1.1.a., line two, after the word "for" by striking out the word "the" and inserting in lieu thereof the word "a" and, after the word "investigation", by inserting the following: "undertaken pursuant to subdivision 8.1.1. of this rule”.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section twenty-two, article sixteen, chapter eleven, of this code, relating to the Alcohol Beverage Control Commission (nonintoxicating beer licensing and operations procedures, 176 CSR 1), is authorized, with the following amendments:
On page four, by redesignating paragraph 3.1.2.a. as subdivision 3.1.3. and renumbering the remaining subdivision accordingly;

On page four, paragraph 3.1.2.a., line two, after the words “by the ABCC for” by striking out the word “the” and inserting in lieu thereof the word “a” and after the word “investigation” by inserting the following: “undertaken pursuant to subdivision 3.1.2. of this rule”;

On page twelve, subdivision 3.2.2, on line three, after the word “manufacturer” by striking out the word “whose chief place of business is outside of the State of West Virginia”; and

On page twenty-seven, following paragraph 13.2.1.3, by inserting a new paragraph designated as 13.2.1.4, to read as follows:

“13.2.1.4. The provisions of this rule and W. Va. Code § 11-16-1 et. seq. shall be part of all franchise agreements subject to the provisions of W. Va. Code § 11-16-21 and may not be altered by the parties.”;

On page twenty, subdivision 6.1.14, by striking out the word “and” and the comma;

On page twenty, subdivision 6.1.15, by changing the period to a semicolon and inserting the word “and” and a comma;

And,

On page twenty, following subdivision 6.1.15, by inserting a new subdivision, designated as 6.1.16, to read as follows:
“6.1.16. For any person to manufacture, sell, transport, deliver, furnish, purchase, consume or possess any nonintoxicating beer except as provided by the laws of this state or rules lawfully promulgated by the Commissioner.”.

§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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 December, two thousand six, relating to the insurance Commissioner (rate filing requirements for title insurance companies, 114 CSR 77), is authorized with the following amendment:

On page one, section 3, subsection 3.3, line thirty-five, following the words “household purposes”, by striking out the comma and the words “where the insurance affords coverage in whole or in part to the person occupying the property”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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 December, two thousand six, relating to the insurance Commissioner (individual limited health benefits plans, 114 CSR 78), is authorized with the following amendment:

On page two, section five, subsection 5.3, line eighteen, by striking out the word “An” and inserting in lieu thereof the following: “Except as provided in section three, article
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29 fifteen-d, chapter thirty-three of the Code of West Virginia, an”;

31 And,

32 On page three, section six, after subsection 6.3., by inserting a new subsection, designated subsection 6.4., to read as follows:

35 “6.4. Before approving any plan or policy under this rule, the Commissioner must find that the plan or policy furthers the legislative purpose of W. Va. Code §33-15D-1, et seq., by providing substantial preventative care and primary care benefits. This subsection does not apply to any plan or policy approved by the Commissioner prior to the effective date of this rule unless and until the provider of the plan or policy makes a subsequent filing with regard to such plan or policy.”

44 (c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, 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 December, two thousand six, relating to the insurance Commissioner (group limited health benefits plans, 114 CSR 79), is authorized, with the following amendment:

53 On page two, section seven, after subsection 7.3., by inserting a new subsection, designated subsection 7.4., to read as follows:

56 “7.4. Before approving any plan or policy under this rule, the Commissioner must find that the plan or policy furthers the legislative purpose of W. Va. Code §33-16F-1, et seq., by providing substantial preventative care and primary care benefits. This subsection does not apply to any plan or policy approved by the Commissioner prior to the effective date of
§64-7-3. Racing Commission.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 seventeenth day of January, two thousand seven, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized, with the following amendment:

On page four, subsection 2.53, after the word “substance” by striking out the comma;

On page fifty-eight, subsection 66.10., after the word “electrolytes.” by striking out the words “Prerace-testing” and inserting in lieu thereof the words “Pre-race testing”;

On page fifty-eight, subsection 66.10., after the words “If testing” by striking out “post race” and inserting in lieu thereof the word “post-race”;

On page fifty-eight, subsection 66.10., after the words “dioxide concentration.” by striking out the word “If” and capitalizing the word “the”;

On page fifty-eight, subsection 66.10., after the words “racing chemist” by inserting the words “shall inform the stewards if he or she”;

On page fifty-eight, subsection 66.10., after the words “per liter” by changing the comma to a period and by striking out the remainder of the subsection;

On page fifty-eight, subsection 66.11., by striking out the word “shall” and inserting in lieu thereof the word “do”;
On page sixty-three, by striking out subdivision 73.2.1. through subparagraph 73.2.1.1.c. and inserting in lieu thereof the following:

“73.2.a. Acting with reasonable cause, the stewards or a designated representative of the Racing Commission may direct any licensee, occupational permit holder or employee to deliver a specimen of urine in the presence of a designated person or subject himself or herself to the taking of a sample of blood or other bodily fluids by a designated person.”

And,

On pages sixty-three and sixty-four, by redesignating subdivisions 73.2.2. through 7.3.5. as subdivisions 73.2.b. through 73.2.e.

§64-7-4. Tax Department.

(a) The legislative rule filed in the State Register on the twenty-fifth day of July, two thousand six, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the second day of November, two thousand six, relating to the Tax Department (abusive tax shelters, 110 CSR 10J), is authorized, with the following amendments:

On page five, paragraph 3.2.17.1., on line three, by striking out “3.2.13.1” and inserting in lieu thereof “3.2.13”;

On page fifteen, subdivision 6.3.2., by striking out the words “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”;

And,
On page seventeen, subdivision 7.3.2., by striking out the subdivision in its entirety and renumbering the remaining subdivision.

(b) The legislative rule filed in the State Register on the twenty-second day of December, two thousand five, authorized under the authority of section five, article ten, chapter eleven, of this code, modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighth day of June, two thousand six, relating to the Tax Department (Consumers Sales and Service Tax and Use Tax - reduced sales tax on food, 110 CSR 15H), is authorized, with the following amendment:

On page eight, section 5.1, line one, after the word "Section", by striking out "2" and inserting in lieu thereof "3".

CHAPTER 156

(Com. Sub. for S.B. 274 - By Senators Minard, Fanning, Prezioso, Unger and Boley)

[Passed March 4, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

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; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Transportation; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to
and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; authorizing the Division of Highways to promulgate a legislative rule relating to waste tire remediation and environmental cleanup; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to disclosure of information from the files of the Division of Motor Vehicles.

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 THE 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-fourth day of July, two thousand six, 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.

(b) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand six, authorized under the authority of section eight, article two-a, chapter seventeen
of this code relating to the Division of Highways (waste tire remediation and environmental cleanup, 157 CSR 8) is authorized.

§64-8-2. Division of Motor Vehicles.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of sections nine and twelve, article two-a, 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 second day of November, two thousand six, relating to the Division of Motor Vehicles (disclosure of information from the files of the Division of Motor Vehicles, 91 CSR 8) is authorized with the following amendment:

On page one, line six, by striking out the words “POLICIES PERTAINING TO THE”;

On page one, section three by striking out the caption and inserting in lieu thereof the following: “Statutory Background”;

On page one, subsection 3.1., line four, after the words “use of the information.”, by creating a new subsection, designated subsection 3.2.;

On page one, subsection 3.1., line six, after the word “seq.”, by creating a new subsection, designated subsection 3.3., and by renumbering the remaining subsections accordingly;

On page two, subsection 4.1., by placing quotation marks around the words “Appropriate identification”, by striking
out the words “is defined as” and by inserting in lieu thereof the word “means”;

On page two, subsection 4.2., by placing quotation marks around the words “Consensual users”, by striking out the word “are” and by inserting in lieu thereof the word “means”;

On page two, subsection 4.3., by placing quotation marks around the words “Permitted users”, by striking out the word “are” and by inserting in lieu thereof the word “means”;

On page two, subsection 4.4., by placing quotation marks around the word “Requestor”, by striking out the words “is defined as” and by inserting in lieu thereof the word “means”;

On page two, subsection 4.5., by placing quotation marks around the words “Required users”, by striking out the word “are” and by inserting in lieu thereof the word “means”;

On page two, subsection 4.6., by placing quotation marks around the words “Uniform Motor Vehicle Records Disclosure Act” and the word “Act”;

On page two, subsection 4.7., by placing quotation marks around the words “Written permission”;

On page four, after paragraph 6.2.a.3., by inserting a new paragraph, designated paragraph 6.2.a.4., to read as follows:

If the Division discloses personal information pursuant to W. Va. Code §17A-2A-7 and this subdivision, the Division shall notify the person whose personal information was requested in writing that the information has been disclosed as required by statute and this rule. The notice provisions of this paragraph do not apply to disclosure of information
through bulk information contracts or disclosure pursuant to a subpoena or court order.

On page five, subsection 7.1., by striking out the words "driver's license record" and inserting in lieu thereof the words "abstract of operating record (7 years)";

And,

On page five, subsection 7.2., by striking out the words "driver history" and inserting in lieu thereof the words "complete abstract of operating record".

CHAPTER 157

(Com. Sub. for S.B. 319 - By Senators Minard, Fanning, Prezioso, Unger and Boley)

[Passed March 9, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies of the state 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 Commissioner of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia agricultural liming materials; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to West Virginia Plant Pest Control Act; authorizing Commissioner of Agriculture to promulgate a legislative rule relating to noxious weeds; authorizing Board of Architects to promulgate a legislative rule relating to the registration of architects; authorizing State Auditor to promulgate a legislative rule relating to transaction fees and rate structures; authorizing State Conservation Agency to promulgate a legislative rule relating to the State Conservation Committee; authorizing Board of Examiners in Counseling to promulgate a legislative rule relating to licensing; authorizing Board of Examiners in Counseling to promulgate a legislative rule relating to license renewal and continuing education requirements; authorizing Hospital Finance Authority to promulgate a legislative rule relating to establishment of a fee schedule and costs allocations applicable to the issuance of bonds by the authority; authorizing Board of Landscape Architects to promulgate a legislative rule relating to registration of landscape architects; authorizing Board of Landscape Architects to promulgate a legislative rule relating to continuing education; authorizing Board of Landscape Architects to promulgate a legislative rule relating to fees; authorizing Massage Therapy Licensure Board to promulgate a legislative rule relating to general provisions; authorizing Board of Medicine to promulgate a legislative rule relating to licensing and disciplinary procedures for physicians and podiatrists; authorizing Board of Osteopathy to promulgate a legislative rule relating to osteopathic physician assistants; authorizing Board of Pharmacy to promulgate a legislative rule relating to ephedrine
and pseudoephedrine control; authorizing Real Estate Commission to promulgate a legislative rule relating to requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage businesses; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to requirements for registration and licensure; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to continuing education; authorizing Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to dialysis technicians; authorizing Secretary of State to promulgate a legislative rule relating to procedures for canvassing elections; authorizing Secretary of State to promulgate a legislative rule relating to procedures for recount of election results; authorizing Secretary of State to promulgate a legislative rule relating to absentee voting by military voters who are members of reserve units called to active duty; authorizing Secretary of State to promulgate a legislative rule relating to procedures for handling ballots and counting write-in votes in counties using optical scan ballots; authorizing Secretary of State to promulgate a legislative rule relating to the Uniform Commercial Code; repealing a rule promulgated by the Secretary of State relating to West Virginia Product Lien Central Filing System; authorizing State Treasurer to promulgate a legislative rule relating to providing services to political subdivisions; and authorizing Board of Veterinary Medicine to promulgate a legislative rule relating to registration of veterinary technicians.

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.

§64-9-2. Board of Architects.
§64-9-5. Board of Examiners in Counseling.
§64-9-6. Hospital Finance Authority.
§64-9-7. Board of Landscape Architects.
§64-9-10. Board of Osteopathy.
§64-9-11. Board of Pharmacy.
§64-9-12. Real Estate Commission.
§64-9-14. Secretary of State.
§64-9-16. Board of Veterinary Medicine.


(a) The legislative rule filed in the State Register on the twenty-fourth day of July, two thousand six, authorized under the authority of section two, article nine, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifteenth day of September, two thousand six, relating to the Commissioner of Agriculture (animal disease control, 61 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the twentieth day of July, two thousand six, authorized under the authority of section eight, article fifteen-a, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifteenth day of September, two thousand six, relating to the Commissioner of Agriculture (West Virginia Agricultural Liming Materials Law, 61 CSR 6A) is authorized with the following amendments:
On page three, subsection 6.2., after the word “commissioner”, by striking out the word “shall” and inserting in lieu thereof the word “may”; And, On page three, subsection 8.1., by striking out “8.1.a.”

(c) The legislative rule filed in the State Register on the twentieth day of July, two thousand six, authorized under the authority of section three, article twelve, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-fourth day of October, two thousand six, relating to the Commissioner of Agriculture (West Virginia Plant Pest Control Act, 61 CSR 14) is authorized.

(d) The legislative rule filed in the State Register on the twentieth day of July, two thousand six, authorized under the authority of section four, article twelve-d, chapter nineteen of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fifteenth day of September, two thousand six, relating to the Commissioner of Agriculture (noxious weeds, 61 CSR 14A) is authorized.

§64-9-2. Board of Architects.

The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section one, article twelve, chapter thirty of this code, modified by the Board of Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of September, two thousand six, relating to the Board of Architects (registration of architects, 2 CSR 1) is authorized with the following amendment:
On page nine, subsection 8.8., line six, after the words “regardless of age.”, by striking out the remainder of the subsection.


1 The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section ten-c, article three, chapter twelve of this code, relating to the State Auditor (transaction fee and rate structure, 155 CSR 4) is authorized.


1 The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section four, article twenty-one-a, chapter nineteen of this code, modified by the State Conservation Agency to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the seventeenth day of November, two thousand six, relating to the State Conservation Agency (State Conservation Committee, 63 CSR 1) is authorized.

§64-9-5. Board of Examiners in Counseling.

1 (a) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, authorized under the authority of section five, article thirty-one, chapter thirty of this code, modified by the Board of Examiners in Counseling to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twentieth day of December, two thousand six, relating to the Board of Examiners in Counseling (licensing, 27 CSR 1) is authorized with the following amendments:

10 On page three, subsection 4.2., by striking out “4.2.1”;  
11 On page three, by redesignating subdivision 5.1.a as subsection 5.2;
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13 On page three, by redesignating paragraphs 5.1.a.(1) through 5.1.a.(5) as subdivisions 5.2.a. through 5.2.e;

15 On page four, subdivision 6.1.b., at the beginning of the sentence, by striking out the words “The applicant” and inserting in lieu thereof the words “After the effective date of this rule in 2007, applicants”;

19 On page six, paragraph 6.1.b.11, after the words “family counseling/therapy” by inserting a semicolon;

21 On page eight, subdivision 6.2.c, line fifteen, after the word “supervisor” by inserting the word “shall”;

23 On page eight, subdivision 6.2.c., in the final sentence of the subdivision after the words “statement detailing” by striking out the word “their” and inserting in lieu thereof the words “his or her”;

27 On page eight, subsection 7.1, in the first sentence after the words “must meet the” by inserting the words “equivalency of”;

30 On page nine, subsection 7.1, in the final sentence after the words “in 1986” by inserting the words “and who have maintained their licenses continually since that time”;

33 On page nine, paragraph 7.1.b.1., after the words “of this section” by striking out the words “will receive credit of forty (40) contact hours for each renewal prior to the effective date” and inserting in lieu thereof the words “may use the forty (40) contact hours earned for each renewal to meet the course requirements set forth in section 6.1.b.”;

39 On page nine, subsection 7.2, in the first sentence after the words “must meet the” by inserting the words “equivalency of”;

42 On page nine, section eight, line one by striking out “8.1.”;
On page ten, by redesignating subdivisions 8.1.a. through 8.1.c. as subdivisions 8.1 through 8.3.;

On page twelve, section thirteen, line one by striking out “13.1.” and by striking out the word “persons” and inserting in lieu thereof the word “person”;

On page fourteen, subsection 16.6., line one, after the words “36 months”, by striking out the comma and words “subject to the following renewal provision”;

On page fourteen, subdivision 16.6.a., line one, by striking out “16.6.a.”;

On page fourteen, section seventeen, line one, by striking out “17.1”; and,

On page fourteen, by redesignating subdivisions 17.1.a. through 17.1.e. as subdivisions 17.1. through 17.5.

(b) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, authorized under the authority of section five, article thirty-one, chapter thirty of this code, relating to the Board of Examiners in Counseling (license renewal and continuing education requirements, 27 CSR 3) is authorized with the following amendments:

On page two, subsection 5.1., by striking out “5.1.a.”;

On page two, subdivision 5.1.a., line nine, after the words “renewals can” by inserting the word “be” and after the words “obtained through” by striking out “ACA” and inserting in lieu thereof the words “American Counseling Association (ACA)”;

On page two, subsection 5.2., by striking out “5.2.a.”;
On page three, subsection 5.5., by striking out "5.5.a.";

On page three, subsection 5.8., after the word "status" by striking out the comma;

On page three, subsection 5.9, after the word "programs" by changing the semicolon to a period;

On page three, subsection 5.9., by striking out "5.9.1.";

On page three, subdivision 5.9.1, line five, by striking out the word "program" and, after the words "home study", by inserting the word "program";

And,


§64-9-6. Hospital Finance Authority.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section five, article twenty-nine-a, chapter sixteen of this code, modified by the Hospital Finance Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the thirtieth day of October, two thousand six, relating to the Hospital Finance Authority (establishment of a fee schedule and costs allocations applicable to the issuance of bonds by the Hospital Finance Authority, 116 CSR 1) is authorized.

§64-9-7. Board of Landscape Architects.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article twenty-two, chapter thirty of this code, modified by the Board of Landscape Architects
to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on the
eleventh day of January, two thousand seven, relating to the
Board of Landscape Architects (registration of landscape
architects, 9 CSR 1) is authorized with the following
amendments:

On page one, subsection 1.2., after “30-22-”, by striking
out the remainder of the subsection and inserting in lieu
thereof “6”;

On page one, subdivision 2.2.e., by striking out the word
“Means”;

On page two, subdivision 2.2.g., by striking out the word
“Means”;

On page two, subdivision 2.2.j., by striking out the word
“Means”;

On page three, subsection 3.5., line three, by striking out
the word “Secretaries” and inserting in lieu thereof the word
“secretaries”;

On page three, subsection 3.5., line four, by striking out
the word “Secretaries” and inserting in lieu thereof the word
“secretaries”;

On page three, subsection 4.1., line three, by striking out
the word “shall” and inserting in lieu thereof the word “may”;

On page three, subsection 4.1., line four, by striking out
the word “shall” and inserting in lieu thereof the word “may”;

On page three, subsection 4.10., after the words “number
and” by inserting the word “the”;

On page four, subdivision 4.12.b., after the word
“provided”, by striking out the comma;

On page four, subdivision 4.12.c., by striking out the
word “shall” and inserting in lieu thereof the word “may”;

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On page four, paragraph 4.13.a.1., after the word "certification", by changing the comma to a semicolon;

On page four, paragraph 4.13.a.2., by capitalizing the word "if";

On page four, subdivision 4.13.b., by striking out the word "prescribed" and inserting in lieu thereof the word "provided";

On page four, subsection 5.1., by striking out the word "plus" and inserting in lieu thereof the word "and";

On page four, subsection 5.2., after the word "place" by striking out the period and the words "The Board" and inserting in lieu thereof the word "and";

On page five, subsection 5.4., after the words "examination period." by striking out the word "Those" and inserting in lieu thereof the words "If the applicant fails to successfully complete those";

On page five, subsection 5.4., after the word "failed", by striking out the words "must be retaken";

On page five, subsection 5.4., after the words "(2) year period" by striking out the period and the words "If not retaken during this two (2) year period";

On page five, subsection 5.5., by striking out the word "must" and inserting in lieu thereof the words "who fails to";

On page five, subsection 5.5., after the words "(5) year period", by striking out the period and the words "Applicants not so doing";

On page five, subsection 5.6., by striking out the words "in the event that" and inserting in lieu thereof the word "if";

On page five, subsection 5.6., by striking out the words "maintain a credit of" and inserting in lieu thereof the word "credit";
On page five, subsection 5.6., after the words “handling fee.” by striking out the words “Examination credit for the applicant” and inserting in lieu thereof the words “The credit”; 

On page five, subsection 5.6., after the words “original examination date” by striking out the words “after which the remaining credit is forfeit” and inserting in lieu thereof the words “or be forfeited”; 

On page five, section six, by striking out subsection 6.3.in its entirety and inserting in lieu thereof the following: “6.3. A temporary permit may not be renewed or a new one issued.”; 

On page five, subsection 7.1., by striking out the words “to the Board within thirty (30) days of the change” and after the words “current information” by inserting the words “within thirty (30) days of the change”; 

On page five, subdivision 7.3.a., after the word “requirements” by striking out the word “as”; 

On page five, subdivision 7.3.b., by striking out the word “required” and inserting in lieu thereof the word “renewal”; 

On page five, subdivision 7.3.b., after the word “fee” by inserting the word “and”; 

On page six, subdivision 7.3.c., by striking out the word “prescribed in” and by inserting the words “in accordance with”; 

On page six, subdivision 7.4.f., by striking out the word “shall” and inserting in lieu thereof the word “may”; 

On page six, subdivision 7.5.a., after the words “(4) years” by striking out the comma and the word “desiring” and inserting in lieu thereof the words “and who desires”; 

On page six, subdivision 7.5.b., by striking out the word “prescribed” and inserting in lieu thereof the word “provided”;
On page seven, subdivision 7.5.c., by striking out the word “The” and inserting in lieu thereof the word “A”;
On page seven, subdivision 7.5.c., after the word “registrant” by inserting the words “seeking reinstatement”;
On page seven, subdivision 8.2.b., after the word “signature”, by striking out the words “that is” and inserting in lieu thereof a comma and the words “provided pursuant to”;
On page seven, subdivision 8.2.b., after the word “process” by striking out the comma;
On page seven, paragraph 8.2.b.2., by capitalizing the word “capable”;
On page seven, paragraph 8.2.b.3., by capitalizing the word “under”;
On page seven, paragraph 8.2.b.4., by capitalizing the word “linked”;
On page seven, subsection 8.3., by striking out the words “for the use in the State of West Virginia”;
On page seven, subdivisions 8.4.b. through 8.4.d., by capitalizing the word “the”;
On page eight, subsection 8.9., line four, after the words “revocation of” by inserting the words “his or her”;
On page eight, subsection 8.11., by striking out the words “the registrant signing and sealing documents” and inserting in lieu thereof the word “Documents”;
On page eight, subsection 8.11., after the words “shall be” by inserting the words “signed and sealed by”;
On page eight, subsection 8.12., by striking out the words “made by”;
On page eight, subsection 8.12., after the word “she” by inserting the words “has made”;
On page eight, subsection 9.1., by striking out the word “who” and inserting in lieu thereof the word “which”; 

On page eight, subsection 9.1., by striking out the words “met the provisions” and inserting in lieu thereof the words “satisfied the requirements”; 

On page eight, subsection 9.1., by striking out the words “the seal of the Board” and inserting in lieu thereof the word “seal”; 

On page nine, subsection 9.3., line one, after the word “including” by inserting the words “those for”; 


On page nine, by striking out paragraph 9.6.a.2. in its entirety; 

On page nine, paragraph 9.6.a.3., by striking out the word “prescribed” and inserting in lieu thereof the words “as provided”; 

On page nine, paragraph 9.6.a.4., by striking out the word “who” and inserting in lieu thereof the word “which”; 

On page nine, subsection 9.9., after the word “submitted” by striking out the words “to the Board”; 

On page nine, subsection 9.9., after the words “responsible charge” by striking out the comma and inserting the word “any”; 

On page ten, subdivision 10.3.d., after the word “experience” by striking out the comma and the word “nor” and inserting in lieu thereof the word “or”; 

On page ten, subdivision 10.3.d., after the word “any” by striking out the word “such”; 

On page ten, subdivision 10.3.e., after the word “field” by striking out the words “landscape architecture”;
On page ten, subdivision 10.3.e., after the words “upon request” by striking out the words “of the landscape architect”;

On page ten, subdivision 10.4.d., after the word “advice” by striking out the comma and the word “who” and inserting in lieu thereof the word “which”;

On page ten, subdivision 10.4.e., by striking out the word “found” and inserting in lieu thereof the word “founded”;

On page eleven, subdivision 10.4.f., line two, after the word “terminate”, by inserting the words “his or her”; 

On page eleven, subdivision 10.4.f., after the words “reference to the project.” by striking out the remainder of the subdivision;

On page eleven, subdivision 10.4.g., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 10.4.h., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 10.5.c., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 10.5.d., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 10.5.e., line one, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 10.5.e., by striking out the word “organization” and inserting in lieu thereof the word “firm”;

On page eleven, subdivision 10.5.e., by striking out the words “private concern, shall” and inserting in lieu thereof the words “firm, may”;
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193 On page eleven, subdivision 10.5.e., line five, by striking out the words “private concern” and inserting in lieu thereof the word “firm”;

196 On page eleven, subdivision 10.5.f., line one, by striking out the word “shall” and inserting in lieu thereof the word “may”;

199 On page eleven, subdivision 10.5.f., line two, by striking out the word “shall” and inserting in lieu thereof the word “may”;

202 On page eleven, subdivision 10.5.g., by striking out the word “shall” and inserting in lieu thereof the word “may”;

204 On page twelve, subsection 10.6., line one, by striking out the word “shall” and inserting in lieu thereof the word “may”;

207 On page twelve, subsection 10.6., after the words “misrepresentation of his or her” by striking out the comma and inserting the word “own”;

210 On page twelve, subsection 10.6., line two, by striking out the word “shall” and inserting in lieu thereof the word “may”;

213 On page twelve, subsection 10.6., after the words “of prior assignments.” by striking out the remainder of the subsection;

216 On page twelve, subsection 10.7., line one, by striking out the word “shall” and inserting in lieu thereof the word “may”;

219 And,

220 On page twelve, subsection 10.9., after the words “grounds for” by striking out the words “a charge of” and inserting in lieu thereof the words “charging a violation”.

223 (b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article twenty-two, chapter thirty
of this code, modified by the Board of Landscape Architects to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eleventh day of January, two thousand seven, relating to the Board of Landscape Architects (continuing education, 9 CSR 2) is authorized with the following amendments:

On page one, section two, by striking out “2.1” and by redesignating subdivisions 2.1.a. through 2.1.c. as subdivisions 2.1. through 2.3.;

On page one, subdivision 2.1.c., after the word “tutorials” by striking out the semicolon;

On page one, subdivision 2.1.c., after the word “provided”, by striking out the comma;

On page one, subsection 3.1., by striking out the words “for each renewal period” and inserting in lieu thereof the word “annually”;

On page two, subdivision 3.3.e, after the word “architecture” by striking out the words “and to” and inserting in lieu thereof the word “of”;

On page two, subsection 3.4., by striking out the words “continuing education related”;

On page two, subsection 3.4., after the word “activity” by inserting the words “for continuing education credit”;

On page two, subsection 3.5., by striking out the words “When a” and inserting in lieu thereof the word “A”;

On page two, subsection 3.5., by striking out the words “under suspension seeks” and inserting in lieu thereof the words “has been suspended may seek”;

On page two, subsection 3.5., after the words “reinstatement of” by striking out the words “a license, the person seeking reinstatement shall complete” and inserting in lieu thereof the words “his or her license by completing”;
On page two, subsection 3.5., by striking out the words “professional development hours” and inserting in lieu thereof the words “PDH units”;

On page two, subsection 3.5., line six, after the words “PDH units and”, by inserting the word “to”;

On page two, section four, by striking out “4.1.” and by redesignating subdivisions 4.1.a and 4.1.b. as subdivisions 4.1. and 4.2.;

On page two, subsection 4.1, by striking out the words “maintaining records is the responsibility of the licensee.”;

On page three, section five, by striking out “5.1.” and by redesignating subdivisions 5.1.a. through 5.1.d. as subdivisions 5.1. through 5.4.;

On page three, subsection 5.1., by striking out the word “board” and inserting in lieu thereof the word “Board”;

On page three, subdivision 5.1.a., by striking out the words “way of”;

On page three, subdivision 5.1.a., after the word “exempt”, by striking out the words “for the first renewal period following the original date of” and inserting in lieu thereof the words “from continuing education requirements until their licenses have been renewed a first time after initial”;

On page three, subdivision 5.1.b., by striking out the words “professional development hours” and inserting in lieu thereof the words “PDH units”;

On page three, subdivision 5.1.c., lines two and four, by striking out the word “board” and inserting in lieu thereof the word “Board”;

On page three, subdivision 5.1.c., after the word “occurs.” by striking out the remainder of the subdivision;
On page three, subdivision 5.1.d., by striking out the word “Licensee” and inserting in lieu thereof the word “licensee”;

On page three, subdivision 5.1.d., after the word “exempt” by inserting the words “from continuing education requirements”;

On page three, subsection 6.1., after the word “proof”, by striking out the words “of satisfying the” and inserting in lieu thereof the words “that he or she has satisfied”;

And,

On page three, subsection 6.2., line five, by striking out the word “further” and inserting in lieu thereof the word “additional”.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article twenty-two, chapter thirty of this code, relating to the Board of Landscape Architects (fees, 9 CSR 3) is authorized with the following amendments:

On page one, by striking out subsection 2.2. in its entirety and inserting in lieu thereof the following:

2.2. “Board” means the West Virginia State Board of Landscape Architects;

On page one, by striking out “2.2.a.” and inserting in lieu thereof “2.3.”;

On page one, subdivision 2.2.a., by placing quotation marks around the word “Registrant” and by striking out the hyphen and inserting in lieu thereof the word “means”;

On page one, subsection 3.1., by striking out the words “West Virginia State Board of Landscape Architects” and inserting in lieu thereof the word “Board”;

On page one, subsection 3.2., by striking out the word “The” and inserting in lieu thereof the words “Each year during the month of April, the”;

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322 On page one, subsection 3.2., after the word “registrant” by striking out the words “during the month of April of each year”;
325 On page one, subsection 3.4., by striking out the words “A renewal” and inserting in lieu thereof the words “If a renewal application is”;
328 And,
329 On page one, subsection 3.4., after the word “June”, by inserting a comma and the words “the registrant’s license”.


1 The legislative rule filed in the State Register on the seventeenth day of July, two thousand six, authorized under the authority of section six, article thirty-seven, chapter thirty of this code, modified by the Massage Therapy Licensure Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the third day of August, two thousand six, relating to the Massage Therapy Licensure Board (general provisions, 194 CSR 1) is authorized with the following amendment:

10 On page four, by redesignating subdivision 3.11.a. as subsection 3.12. and by renumbering the remaining subsections accordingly.


1 The legislative rule filed in the State Register on the twenty-second day of May, two thousand six, authorized under the authority of section seven, article three, chapter thirty of this code, modified by the Board of Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-sixth day of July, two thousand six, relating to the Board of Medicine (licensing and disciplinary procedures for physicians and podiatrists, 11 CSR 1A) is authorized.
§64-9-10. Board of Osteopathy.

The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand six, authorized under the authority of section one, article fourteen-a, chapter thirty of this code relating to the Board of Osteopathy (osteopathic physician assistants, 24 CSR 2) is authorized.

§64-9-11. 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.

§64-9-12. Real Estate Commission.

The legislative rule filed in the State Register on the twenty-third day of March, two thousand six, authorized under the authority of section eight, article forty, chapter thirty of this code relating to the Real Estate Commission (requirements in licensing real estate brokers, associate brokers and salespersons and the conduct of brokerage businesses, 174 CSR 1) is authorized with the following amendment:

On page one, subsection 1.1., by striking out the word “regulations” and inserting in lieu thereof the word “rules”.


(a) The legislative rule filed in the State Register on the sixteenth day of June, two thousand six, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of July, two thousand six,
8 relating to the Board of Examiners for Registered Professional Nurses (policies and criteria for the evaluation and accreditation of colleges, departments or schools of nursing, 19 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the sixteenth day of June, two thousand six, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of July, two thousand six, relating to the Board of Examiners for Registered Professional Nurses (requirements for registration and licensure, 19 CSR 3) is authorized with the following amendments:

On page one, subsection 1.1., after the word “nurse” by inserting the words “and describes behavior which constitutes professional misconduct subject to disciplinary action”;

On page one, subsection 1.2, by striking out “and §30-1-4”;

On page one, subsection 2.2., by striking out the word “Supervision” and inserting in lieu thereof the word “supervision” and after the period by striking out the quotation mark;

On page one, subsection 2.3., by striking out the words “Professional Character” and inserting in lieu thereof the words “professional character” and by striking out the word “Board” and inserting in lieu thereof the word “board”;

On page one, subsection 2.6., by striking out the words “national council of state boards of nursing” and inserting in lieu thereof the words “National Council of State Boards of Nursing”;

On page two, by striking out paragraph 3.1.a.4. in its entirety and inserting in lieu thereof the following:

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3.1.a.4. Request and submit to the board the results of a state and a national electronic criminal history records check by the State Police.

3.1.a.4.A. The applicant shall furnish to the State Police a full set of fingerprints and any additional information required to complete the criminal history records checks.

3.1.a.4.B. The applicant is responsible for any fees required by the State Police in order to complete the criminal history records checks.

3.1.a.4.C. The criminal history records required by this paragraph must have been requested within the twelve (12) months immediately before the application is filed with the Board.

3.1.a.4.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant’s residence, if outside of West Virginia.

3.1.a.4.E. To be qualified for licensure, the results of the criminal history records checks must be unremarkable and verified by a source acceptable to the board other than the applicant.

3.1.a.4.F. Instead of requiring the applicant to apply directly to the State Police for the criminal history records checks, the board may contract with a company specializing in the services required by this paragraph.

3.1.a.4.G. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.

On page two, subdivision 3.1.b., by striking out the word "Veterans" and inserting in lieu thereof the word "veterans";

On page two, subdivision 3.1.b., after the words "et seq." by inserting the words "an applicant who is a veteran";

On page three, by striking out paragraph 3.1.b.5. in its entirety and inserting in lieu thereof the following:
3.1.b.5. Request and submit to the board the results of a state and a national electronic criminal history records check by the State Police.

3.1.b.5.A. The applicant shall furnish to the State Police a full set of fingerprints and any additional information required to complete the criminal history records checks.

3.1.b.5.B. The applicant is responsible for any fees required by the State Police in order to complete the criminal history records checks.

3.1.b.5.C. The criminal history records required by this paragraph must been have been requested within the twelve (12) months immediately before the application is filed with the Board.

3.1.b.5.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant’s residence, if outside of West Virginia.

3.1.b.5.E. To be qualified for licensure, the results of the criminal history records checks must be unremarkable and verified by a source acceptable to the board other than the applicant.

3.1.b.5.F. Instead of requiring the applicant to apply directly to the State Police for the criminal history records checks, the board may contract with a company specializing in the services required by this paragraph.

3.1.b.5.G. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.;

On page four, by redesignating subparagraph 3.1.c.5.B. as part 3.1.c.5.B.1. and by redesignating part 3.1.c.5.B.1. as part 3.1.c.5.B.2.;

On page four, subparagraph 3.1.c.5.C., by striking out the word “Provide” and inserting in lieu thereof the word “provide”;
On page four, by striking out paragraph 3.1.c.6. in its entirety and inserting in lieu thereof the following:

3.1.c.6. Request and submit to the board the results of a state and a national electronic criminal history records check by the State Police.

3.1.c.6.A. The applicant shall furnish to the State Police a full set of fingerprints and any additional information required to complete the criminal history records checks.

3.1.c.6.B. The applicant is responsible for any fees required by the State Police in order to complete the criminal history records checks.

3.1.c.6.C. The criminal history records required by this paragraph must been have been requested within the twelve (12) months immediately before the application is filed with the Board.

3.1.c.6.D. The board may require the applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant’s residence, if outside of West Virginia.

3.1.c.6.E. To be qualified for licensure, the results of the criminal history records checks must be unremarkable and verified by a source acceptable to the board other than the applicant.

3.1.c.6.F. Instead of requiring the applicant to apply directly to the State Police for the criminal history records checks, the board may contract with a company specializing in the services required by this paragraph.

3.1.c.6.G. The board may deny licensure or certification to any applicant who fails or refuses to submit the criminal history records checks required by this subsection.;
On page four, subparagraph 3.2.a.1.B, by capitalizing the words “board of examiners for registered professional nurses”; 

On page five, subparagraph 3.2.a.1.D., by striking out the word “Board” and inserting in lieu thereof the word “board”; 

On page five, paragraph 3.2.a.2, by capitalizing the words “national council licensure examination”; 

On page five, subparagraph 3.2.b.1.B, by capitalizing the words “board of examiners for registered professional nurses”; 

On page six, paragraph 3.2.b.2, by capitalizing the words “national council licensure examination”; 

On page seven, subparagraph 3.2.c.1.B, by capitalizing the words “board of examiners for registered professional nurses”; 

On page seven, paragraph 3.2.c.2., by capitalizing the words “national council licensure examination”; 

On page nine, subdivision 7.1.c., by striking out the word “Board” and inserting in lieu thereof the word “board”; 

On page nine, subdivision 7.1.d., after the word “system” by striking out the word “as”; 

On page nine, subdivision 7.1.d., after the word “Nursing” by inserting a comma; 

On page eleven, subdivision 7.2.i., by striking out the words “ninety (90)” and inserting in lieu thereof the words “one hundred eighty (180)”;

On page eleven, subsection 8.1., after the word “affidavit” by striking out the semicolon; 

On page eleven, subsection 8.1., line seven, by striking out the word “as”;
On page eleven, subsection 9.1., after the words "issued by" by striking out the word "this" and inserting in lieu thereof the word "the";

On pages eleven and twelve, section nine, by striking out "9.1.a." and by redesignating paragraphs 9.1.a.1. through 9.1.a.6. as subdivisions 9.1.a. through 9.1.f.;

On page twelve, paragraph 9.1.a.6., by striking out the words "Provided, the" and inserting in lieu thereof the words "The fee for a";

On page twelve, paragraph 9.1.a.6., after the word "shall" by striking out the words "have a" and inserting in lieu thereof the word "be" and after the word "prorated", by striking out the remainder of the paragraph;

On page twelve, subsection 9.2., by striking out "9.2.a";

On page twelve, subsection 9.3., by striking out "9.3.a";

On page twelve, subsection 9.3., after the words "recipient of the designation" by striking out the word "shall" and inserting in lieu thereof the word "may";

On page twelve, subsection 9.3., after the words "in any state and" by striking out the word "shall" and inserting in lieu thereof the word "may";

On page twelve, subsection 9.3., line seven, after the word "nurse" by inserting a comma and after the words "he or she" by striking out the words "shall be" and inserting in lieu thereof the word "is";

On page thirteen, subsection 10.2., line three, by striking out the word "as";

On page thirteen, subsection 10.3., after the word "lapsed" by striking out the words "shall be" and inserting in lieu thereof the word "is";

On page thirteen, subsection 10.3., after the words "practitioner and" by striking out the words "shall be" and inserting in lieu thereof the word "is";
On page thirteen, section eleven, by striking out “11.1”;

On page thirteen, section eleven, line eight, by striking out the word “as”;

On page thirteen, subsection 12.1., after the words “registration and” by striking out the word “a” and inserting the word “the”;

On page thirteen, subsection 12.1., line four, by striking out the word “as”;

On page thirteen, subsection 12.2., line three, by striking out the word “as”;

On page thirteen, subsection 12.3., by striking out the word “Board’s” and inserting in lieu thereof the word “board’s”;

On page thirteen, subsection 13.1., after the word “assess” by striking out the word “a” and inserting in lieu thereof the word “the” and after the word “fee” by striking out the word “as”;

On page thirteen, subsection 13.1., by striking out the word “Board’s” and inserting in lieu thereof the word “board’s”;

On page seventeen, subdivision 14.1.ss., by striking out the word “Violated” and inserting in lieu thereof the word “violated”;

On page seventeen, by striking out subsection 14.3. in its entirety and inserting in lieu thereof the following:

14.3. Based on the nature of the complaint filed against a licensee, technician, or of the information received about an applicant, the Board may require the technician or applicant to request and submit to the Board the results of a state and a national electronic criminal history records check by the State Police.

14.3.a. The licensee, technician, or applicant under investigation shall furnish to the State Police a full set of
fingerprints and any additional information required to complete the criminal history records check.

14.3.b. The licensee, technician, or applicant under investigation is responsible for any fees required by the State Police in order to complete the criminal history records check.

14.3.c. The Board may require the licensee, technician, or applicant under investigation to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant’s residence, if outside of West Virginia.

14.3.d. Instead of requiring the licensee, technician, or applicant under investigation to apply directly to the State Police for the criminal history records checks, the Board may contract with a private vendor to provide the services required in this subsection.

14.3.e. The Board may deny licensure or certification or take disciplinary action against any licensee, technician, or applicant who fails or refuses to submit the criminal history records checks required by this subsection.

On page eighteen, subdivision 15.1.b., by striking out the word “Board’s” and inserting in lieu thereof the word “board’s”;

On page eighteen, subdivision 15.1.c., after the words “satisfaction of” by striking out the word “Board’s” and inserting in lieu thereof the word “board’s”;

On page eighteen, subdivision 15.1.c., after the words “extent of” by striking out the word “Board’s” and inserting in lieu thereof the word “board’s”;

And,

On page eighteen, section sixteen, by striking out “16.1”.

(c) The legislative rule filed in the State Register on the sixteenth day of June, two thousand six, authorized under the authority of section four, article seven, chapter thirty of this code, modified by the Board of Examiners for Registered
Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of July, two thousand six, relating to the Board of Examiners for Registered Professional Nurses (continuing education, 19 CSR 11) is authorized with the following amendments:

On page two, subdivision 3.2.1, after the words “during the” by inserting the word “twelve”;

On page three, subdivision 3.5.3, line three, after the words “or shall” by striking out the word “to”;

And,

On page six, paragraph 4.4.2.a, by striking out the word “completed” and inserting in lieu thereof the word “Completing”.

(d) The legislative rule filed in the State Register on the thirtieth day of August, two thousand five, authorized under the authority of sections six and seven, article seven-c, chapter thirty of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of July, two thousand six, relating to the Board of Examiners for Registered Professional Nurses (dialysis technicians, 19 CSR 13) is authorized with the following amendments:

On page one, subsection 1.1., line two, by striking out the words “dialysis technicians,” and inserting in lieu thereof the word “and”;

On page one, subsection 1.1., by striking out the words “for approving and disapproving” and inserting in lieu thereof the words “approval of”;

On page one, section two, by adding the following:

2.1. “Advisory council” means the Dialysis Technician Advisory Council provided for in W. Va. Code §30-7C-9;
2.2. “Board” means the West Virginia Board of Examiners for Registered Professional Nurses; and by renumbering the remaining subsections accordingly;

On page one, subsection 2.1., line two, by striking out the words “comprised of” and inserting in lieu thereof a comma and the word “including”;

On page one, subsection 2.4., by striking out the words “upon delegation by the registered professional nurse or physician”;

On page one, section two, subsection 2.5., line three, after the words “status or” by inserting the word “of’;

On page two, after subsection 2.5., by adding the following:

2.8. “Nurse administrator” means the registered professional nurse responsible for administering a Board-approved dialysis technician training program;

On page two, after subsection 2.7., by adding the following:

2.11. “Training program” means a dialysis training program;

On page two, subsection 3.1., by striking out the words “providing hemodialysis care” and after the word “provide” by inserting the word “hemodialysis”;

On page two, subsection 3.1, by striking out the words “that the performance of the care be delegated” and inserting in lieu thereof the words “the delegation of authority”;

On page two, by striking out subsection 3.2. in its entirety and inserting in lieu thereof the following:

3.2. The dialysis technician may not begin dialysis care until a registered professional nurse or physician has first assessed the patient upon entering the dialysis unit to assure
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339 that he or she is stable and then delegated dialysis care to the
340 dialysis technician.;

341 On page two, subsection 3.3, line two, after the word
342 “access” by changing the semi-colon to a comma and by
343 striking out the word “reports” and inserting in lieu thereof
344 the word “report”;

345 On page two, subsection 3.3, after the word “physician”
346 by inserting a comma;

347 On page two, subsection 3.3, by striking out the words
348 “prior to” and inserting in lieu thereof the word “before”;

349 On page two, subsection 3.3, by striking out the word
350 “proceeding” and inserting in lieu thereof the word
351 “proceeds”;

352 On page two, subsection 3.4, by striking out the word
353 “shall” and inserting in lieu thereof the word “may”;

354 On page three, subdivision 3.5.c., by striking out the
355 words “There is validation of the dialysis technicians” and
356 inserting in lieu thereof the words “The nurse administrator
357 has validated the dialysis technician’s”;

358 On page four, paragraph 3.5.g.6., by striking out the word
359 “engaging” and inserting in lieu thereof the word “engage”;

360 On page four, paragraph 3.5.g.7., by striking out the
361 words “by a dialysis technician”;

362 On page four, by striking out paragraph 3.5.g.8. in its
363 entirety and inserting in lieu thereof the following:

364 3.5.g.8. Not engage in sexual misconduct or in conduct
365 that may reasonably be interpreted as sexual or in any verbal
366 behavior that is or may reasonably be interpreted as seductive
367 or sexually demeaning to a patient. The patient is always
368 presumed incapable of giving free, full or informed consent
369 to these behaviors; and;

370 On page four, paragraph 3.5.g.9., by striking out the word
371 “Treats” and inserting in lieu thereof the word “Treat”;
On page four, subdivision 3.5.h., after the word “technician” by inserting the word “shall”;

On page four, paragraph 3.5.h.1., by striking out the word “Implements” and inserting in lieu thereof the word “Implement”;

On page four, paragraph 3.5.h.1., by striking out the word “clarifies” and inserting in lieu thereof the word “clarify”; and, after the word “information” by changing the semicolon to a period;

On page four, paragraph 3.5.h.1., by striking out “3.5.h.1.a” and by redesignating parts 3.5.h.1.a.1 and 3.5.h.1.a.2 as subparagraphs 3.5.h.1.A. and 3.5.h.1.B.;

On page five, paragraph 3.5.h.2., by striking out the word “Initiates” and inserting in lieu thereof the word “Initiate”;

On page five, subdivision 3.5.i., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page five, subsection 3.7., after the words “subject to” by inserting the word “disciplinary”;

On page five, subsection 4.1., by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page five, subsection 4.1., by striking out the word “only” and, after the word “medications” by striking out the word “as” and inserting in lieu thereof the word “if”;

On page five, subsection 4.1., after the words “prescription and” by striking out the word “as”;

On page five, subsection 4.2., by striking out the words “Administration of” and inserting in lieu thereof the words “Except as provided by this rule, a dialysis technician may not administer” and after the word “medications” by striking out the remainder of the subsection;

On page six, subdivision 5.1.a., by striking out the words “to be approved” and inserting in lieu thereof the word
"approval" and, after the word "shall" by striking out the colon and inserting the word "shall";

On pages six and seven, section five, by striking out paragraph 5.1.a.1. in its entirety and by redesignating subparagraphs 5.1.a.1.A. through 5.1.a.1.E. as paragraphs 5.1.a.1. through 5.1.a.5.;

On page seven, subsection 5.2., by striking out the words "make a determination regarding the approval status of" and inserting in lieu thereof the words "either approve or disapprove";

On page seven, subsection 5.3., by striking out the words "be current" and inserting in lieu thereof the word "continue";

On page seven, subsection 5.3., line four, after the word "period" by striking out the comma;

On page seven, subsection 5.6., after the words "of the Board", by striking out the comma and after the words "meeting the requirements" by striking out the comma;

On page eight, subdivision 6.1.b., by striking out the words "registered professional nurse administering the program" and inserting in lieu thereof the words "nurse administrator";

On page eight, subdivision 6.1.c., in its entirety and by inserting in lieu thereof the following:

6.1.c. The training program shall immediately notify the Board in writing when the nurse administrator vacates the position or is replaced and provide the name and qualifications of the new or interim nurse administrator. A training program may not initiate a new class of dialysis technician trainees unless the new or interim nurse administrator meets the qualifications required by this rule.;

On page eight, paragraph 6.1.d.1., after the word "The" by inserting the words "training program shall provide";
On page eight, paragraph 6.1.d.1., after the word “instructor” by striking out the words “shall be provided”;

On page eight, paragraph 6.1.d.2., by striking out the words “registered professional nurse who is responsible for administering the program” and inserting in lieu thereof the words “nurse administrator”;

On page eight, paragraph 6.1.d.3., after the word “The”, by inserting the words “training program shall report”;

On page eight, paragraph 6.1.d.3., after the word “faculty” by striking out the words “shall be reported”;

On page nine, subdivision 6.1.e., by striking out the words “There shall be” and inserting in lieu thereof the words “Each training program shall develop”;

On page nine, subdivision 6.1.e., after the word “which” by inserting the word “shall”;

On page nine, paragraph 6.1.e.3., by striking out the words “registered professional”;

On page nine, subdivision 6.1.f., after the words “offered by the” by inserting the word “training”;

On page nine, subdivision 6.1.f., by striking out the words “which prepares an individual to perform dialysis care”;

On page nine, subdivision 6.1.f., by striking out the words “which is a minimum” and inserting in lieu thereof the words “of at least”;

On page nine, subdivision 6.1.f., after the word “twenty” by inserting “(320)”;

On page nine, subdivision 6.1.f., line four, by striking out the words “shall include”;

On page nine, subdivision 6.1.f., by striking out the words “for the application of” and inserting in lieu thereof the words “to apply”;

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On page nine, subdivision 6.1.f., by striking out the words “for the achievement of” and inserting in lieu thereof the words “to achieve”;

On page nine, paragraph 6.1.f.1., after the word “instruction” by inserting a comma and striking out the words “shall include instruction”;

On page nine, paragraph 6.1.f.1., after the word “visuals”, by inserting a comma and by striking out the word “which” and inserting in lieu thereof the word “shall”;

On page eleven, by striking out paragraph 6.1.f.2. in its entirety and inserting in lieu thereof the following:

6.1.f.2. The program shall develop written tests for each unit in the curriculum, including a final test, and shall conduct a skills performance evaluation.

On page eleven, by striking out subparagraph 6.1.f.2.A. in its entirety and inserting in lieu thereof the following:

6.1.f.2.A. Exams may be administered by paper/pencil or by computer;

On page twelve, subdivision 6.1.g., by striking out the words “registered professional nurse responsible for administering the program” and inserting in lieu thereof the words “nurse administrator”;

On page twelve, subdivision 6.1.g., after the word “adopt” by inserting the word “written”;

On page twelve, paragraph 6.1.g.1., after the words “of age and” by striking out the words “the individual”;

On page twelve, paragraph 6.1.g.5., after the words “completed the” by inserting the words “three hundred twenty”;

On page twelve, subparagraph 6.1.g.6.A., by striking out the words “dialysis technician-”;

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On page twelve, subparagraph 6.1.g.6.A., by striking out the words “There shall be a statement of” and inserting in lieu thereof the words “The nurse administrator shall adopt a”;

On page thirteen, subparagraph 6.1.g.6.C., by striking out the word “completed” and inserting in lieu thereof the word “completes”; 

On page fourteen, subparagraph 6.1.g.6.F., by striking out the words “registered professional nurse responsible for administering the program” and inserting in lieu thereof the words “nurse administrator”; 

On page fourteen, subdivision 6.1.h., after the words “training program,” by inserting the words “the program shall notify”; 

On page fourteen, subdivision 6.1.h., by striking out the words “shall be notified”; 

On page fourteen, subdivision 6.1.h., after the word “date” by changing the comma to a period and inserting the words “The notice shall include”; 

On page fourteen, by striking out subdivision 6.1.i. in its entirety and inserting in lieu thereof the following: 

6.1.i. If any changes are made to the training program previously approved by the Board when a facility changes ownership, the training program may only be approved as a new program; 

On page fifteen, subdivision 7.2.c., by striking out the words “registered professional nurse responsible for administering the program” and inserting in lieu thereof the words “nurse administrator”; 

On page fifteen, subdivision 8.1.a., by striking out the words “Subsection 6.5.” and inserting in lieu thereof the words “subsection 6.5. of this rule”;
On page sixteen, subdivision 8.2.c., after the words “deficiency report” and “any” by changing the semicolons to commas;

On page seventeen, subdivision 10.1.b., by striking out the word “organization”” and inserting in lieu thereof the word “organization’s”;

On page eighteen, subsection 10.3., after the words “set forth in” by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1";

On page eighteen, subsection 10.3., by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1";

On page eighteen, subsection 10.4., by striking out the words “specified by the Board”;

On page eighteen, subsection 10.4., line four, by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1.”;

On page eighteen, subsection 10.4., line six, by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1";

On page eighteen, subsection 10.6., by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1";

On page eighteen, subsection 10.7., lines two and three, by striking out the words “subdivision 13.10.1" and inserting in lieu thereof “subsection 10.1";

On page eighteen, section eleven, by striking out “11.1.” and by redesignating subdivisions 11.1.a. through 11.1.c. as subdivisions 11.1. through 11.3.;

On page eighteen, section eleven, after the words “examination offered by” by striking out the word “an” and by inserting in lieu thereof the words “one of the following approved”;

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On page eighteen, section eleven, after the word "organization" by striking out the words “approved by the Board of Nursing. The approved testing organizations are”;

On page nineteen, subsection 12.5., by striking out “fo” and inserting in lieu thereof the word “for”;

On page nineteen, by striking out “13.1”;

On page nineteen, section thirteen, after the words “July 1" by striking out the comma;

On page nineteen, subsection 14.1., by striking out the words “in order to engage in dialysis care”;

On page twenty, subdivision 14.1.a., by striking out the words “shall be submitted”;

On page twenty, subdivision 14.1.d., after the semicolon by inserting the word “and”;

On page twenty, subdivision 14.1.e., after “DUI)” by striking out the semicolon;

On page twenty, subdivision 14.1.e., after the word “and” by inserting the words “a letter of explanation that addresses each conviction.”;

On page twenty, section fourteen, by striking out subdivision 14.1.f. in its entirety;

On page twenty-one, subdivision 14.8.a., by striking out the word “Boards” and inserting in lieu thereof the word “Board’s”;

On page twenty-one, subdivision 14.8.e., by striking out the word “Completion” and inserting in lieu thereof the words “The results”;

On page twenty-two, subsection 15.1., by striking out the words “The renewal period for dialysis technicians is annual. All” and inserting in lieu thereof the words “Dialysis technician”;

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On page twenty-two, subsection 15.3., after the words “application for” by inserting the word “reinstatement”;

On page twenty-three, subdivision 16.1.e., after the words “he or she is” by inserting the word “not”;

On page twenty-five, subdivision 16.1.mm., before the word “listed” by inserting the word “is”;

On page twenty-six, by striking out subsection 16.3. in its entirety and inserting in lieu thereof the following:

16.3. Based on the nature of the complaint filed against a technician or of the information received about an applicant, the Board may require the technician or applicant to request and submit to the Board the results of a state and national electronic criminal history records check by the State Police.

16.3.a. The technician or applicant under investigation shall furnish to the State Police a full set of fingerprints and any additional information required to complete the criminal history records check.

16.3.b. The technician or applicant under investigation is responsible for any fees required by the State Police in order to complete the criminal history records check.

16.3.c. The Board may require the technician or applicant to obtain an electronic criminal history records check from a similar agency in the state of the technician or applicant’s residence, if outside of West Virginia.

16.3.d. Instead of requiring the technician or applicant under investigation to apply directly to the State Police for the criminal history records checks, the Board may contract with a private vendor to provide the services required in this subsection.

16.3.e. The Board may deny certification or take disciplinary action against any technician or applicant who fails or refuses to submit the criminal history records checks required by this subsection.
And,

On page twenty-six, section sixteen, by striking out subsection 16.6. in its entirety.

§64-9-14. Secretary of State.

(a) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article one-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 twenty-second day of December, two thousand six, relating to the Secretary of State (procedures for canvassing elections, 153 CSR 18) is authorized.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article one-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 twenty-second day of December, two thousand six, relating to the Secretary of State (procedures for recount of election results, 153 CSR 20) is authorized.

(c) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article one-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 twelfth day of January, two thousand seven, relating to the Secretary of State (absentee voting by military voters who are members of reserve units called to active duty, 153 CSR 23) is authorized.

(d) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of section six, article one-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 twelfth day of January, two thousand seven, relating to the Secretary of State (absentee voting by military voters who are members of reserve units called to active duty, 153 CSR 23) is authorized.
Committee and refiled in the State Register on the twenty-
second day of December, two thousand six, relating to the
Secretary of State (procedures for handling ballots and
counting write-in votes in counties using optical scan ballots,
153 CSR 27) is authorized.

(e) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand six, authorized under
the authority of section five hundred twenty-six, article nine,
chapter forty-six 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
nineteenth day of October, two thousand six, relating to the
Secretary of State (Uniform Commercial Code, 153 CSR 35)
is authorized.

(f) The legislative rule filed in the State Register on the
first day of September, one thousand nine hundred eighty-
nine, authorized under the authority of section four hundred
seven, article nine, chapter forty-six 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 twentieth day of November, one
thousand nine hundred eighty-nine, relating to the Secretary
of State (West Virginia Product Lien Central Filing System,
153 CSR 13) is hereby repealed.


The legislative rule filed in the State Register on the
twenty-fifth day of July, two thousand six, authorized under
the authority of section six, article three-a, chapter twelve of
this code, modified by the Treasurer’s Office to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the State Register on the twenty-
seventh day of October, two thousand six, relating to the
Treasurer’s Office (providing services to political
subdivisions, 112 CSR 13) is authorized with the following
amendments:

On page one, subsection 1.1., by striking out the word
“Services” and inserting in lieu thereof the word “services”
and by striking out the words “Political Subdivisions” and inserting in lieu thereof the words “political subdivisions”; 

On page one, subsection 2.4., by striking out the word “Fee” and inserting in lieu thereof the word “fee”; 

On page one, subsection 2.5., after the word “Credit” by striking out the word “Card” and inserting in lieu thereof the word “card” and by striking out the words “Charge Card” and inserting in lieu thereof the words “charge card”; 

On page two, subsection 2.6., by striking out the word “Merchant” and inserting in lieu thereof the word “merchant”; 

On page two, subsection 2.7., after the word “Debit” by striking out the word “Card” and inserting in lieu thereof the word “card” and by striking out the words “Financial Institution” and inserting in lieu thereof the words “financial institution”; 

On page two, subsection 2.8., after the word “Discount” by striking out the word “Fee” and inserting in lieu thereof the word “fee”; by striking out the word “Merchant” and inserting in lieu thereof the word “merchant”; and by striking out the words “Card Issuer” and inserting in lieu thereof the words “card issuer”; 

On page two, subsection 2.9., by striking out the words “Electronic Payment” and inserting in lieu thereof the words “electronic payment”; 

On page two, subsection 2.11., after the word “Electronic” by striking out the word “Payment” and inserting in lieu thereof the word “payment” and by striking out the words “Wire Transfer” and inserting in lieu thereof the words “wire transfer”; 

On page two, subsection 2.12., after the word “Financial” by striking out the word “Institution” and inserting in lieu thereof the word “institution”; 

On page two, subsection 2.16., by striking out the words “Lockbox Services” and inserting in lieu thereof the words
“lockbox services” and by striking out the words “Financial Institution” and inserting in lieu thereof “financial institution”; On page three, subsection 2.17., by striking out the words “Political Subdivisions” and inserting in lieu thereof the words “political subdivisions”; On page three, subsection 2.18., after the word “Political” by striking out the word “Subdivision” and inserting in lieu thereof the word “subdivision” and by striking out the words “Board of Education” and inserting in lieu thereof the words “board of education”; On page three, subsection 2.19., after the words “Point of” by striking out the words “Sale Terminal” and inserting in lieu thereof the words “sale terminal”; after the word “POS” by striking out the word “Terminal” and inserting in lieu thereof the word “terminal”; and, on lines three and four, by striking out the words “Financial Institution” and inserting in lieu thereof the words “financial institution”; On page three, subsection 2.21., by striking out the words “Lockbox Services” and inserting in lieu thereof the words “lockbox services”; On page three, subsection 2.25., by striking out the words “Wholesale Lockbox” and inserting in lieu thereof the words “wholesale lockbox”; by striking out “Wholesale Lockbox Services” and inserting in lieu thereof the words “wholesale lockbox services”; and by striking out “Wholetail Lockbox Services” and inserting in lieu thereof “wholetail lockbox services”; On page three, subsection 2.26., after the word “Wire” by striking out the word “Transfer” and inserting in lieu thereof the word “transfer”; On page three, subsection 3.1., after the word “Political” by striking out the word “Subdivision” and inserting in lieu thereof the word “subdivision”;
On page four, subsections 3.2. and 3.3., by striking out the words “Political Subdivision” and inserting in lieu thereof the words “political subdivision”;

On page four, subsection 3.5., by striking out the word “Services” and inserting in lieu thereof the word “services”;

On page four, subsection 3.7., by striking out the words “Political Subdivision” and inserting in lieu thereof the words “political subdivision” and by striking out the word “Services” and inserting in lieu thereof the word “services”;

On page four, subsections 4.1., 4.3., and 4.4., after the word “Political” by striking out the word “Subdivisions” and inserting in lieu thereof the word “subdivisions” and by striking out the word “Services” and inserting in lieu thereof the word “services”;

On page four, subsection 4.2., by striking out the words “Political Subdivision” and inserting in lieu thereof the words “political subdivision”;

On page four, subsection 4.5., by striking out the words “Political Subdivisions” and inserting in lieu thereof the words “political subdivisions”;

On page five, subdivisions 5.5.(a) and 5.5(e), by striking out the word “Services” and inserting in lieu thereof the word “services”;

On page five, subdivisions 5.5.(b) and 5.5.(f), by striking out the words “Political Subdivision” and inserting in lieu thereof the words “political subdivision”;

On page five, subdivision 5.5.(c), by striking out the words “Political Subdivision” and inserting in lieu thereof the words “political subdivision” and by striking out the word “Services” and inserting in lieu thereof the word “services”;
§64-9-16. Board of Veterinary Medicine.

The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 twentieth day of October, two thousand six, relating to the Board of veterinary medicine.
Veterinary Medicine (registration of veterinary technicians, 26 CSR 3) is authorized with the following amendments:

On page one, subsection 1.2., by striking out “30-10-7” and inserting in lieu thereof “30-10-1 and §30-10-4”;

On page one, subsection 2.2, after the words “physically present and”, by striking out the words “that he or she is within proper visual or audible distance to adequately” and inserting in lieu thereof the words “within adequate visual and audible distance to”;

On page one, subsection 2.3., lines one and two, by striking out the words “under the direction of a veterinarian”;

On page one, subsection 2.3, after the words “veterinarian who”, by striking out the words “may or may not be physically present.” and inserting in lieu thereof the words “is physically present in the building where and when the procedures are being performed.”;

On page two, subsection 3.1., after the word “Technology”, by striking out the comma;

On page three, subsection 9.B, after subdivision (10), by inserting the word “and” and a new subdivision (11) to read as follows:

“(11) Perform external suturing.”;

On page seven, subsection 15.1, after the words “veterinary technology” by inserting a comma and the words “at least four (4) of which must be in the field of veterinary science,”;

And,

On page nine, subdivision 16.1.b., after the words “continuing education hours” by inserting a comma and the words “at least four (4) of which must be in the field of veterinary science”.

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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 Office of Miners Health, Safety and Training to promulgate a legislative rule relating to protective clothing and equipment; authorizing the Office of Miners Health, Safety and Training to promulgate a legislative rule relating to standards for certification of coal mine electricians; authorizing the Bureau of Employment Programs to promulgate a legislative rule relating to requiring agencies to revoke or not grant issue or renew approval documents with employing units on the bureau’s default list; authorizing the Division of Forestry to promulgate a legislative rule relating to ginseng; 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 special boating rules; authorizing the Division of Natural Resources to promulgate a legislative rule relating to deer hunting; authorizing the Division of Natural Resources to promulgate a legislative rule relating to wildlife disease management; and authorizing the Division of Natural Resources to promulgate a legislative rule relating to public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources.

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Office of Miners Health Safety and Training.

§64-10-2. Bureau of Employment Programs.

§64-10-3. Division of Forestry.

§64-10-4. Division of Natural Resources.

§64-10-1. Office of Miners Health Safety and Training.

(a) The legislative rule filed in the State Register on the twenty-seventh day of April, two thousand six, authorized under the authority of section six, article two, chapter twenty-two-a, section thirty-eight, article two, chapter twenty-two-a and section fifty-five, article two, 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 eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training...
(protective clothing and equipment, 56 CSR 4), is authorized
with the following amendments:

On page one, subsection 1.1., by striking out the words
“these emergency rules” and inserting in lieu thereof the
words “this rule”;

On page one, subsection 2.1., by striking out the word
“State’s” and inserting in lieu thereof the word “state’s”;

On page one, subsection 2.1., line four, by striking out
the words “these legislative rules” and inserting in lieu
thereof the words “this rule”;

On page two, subsection 2.2., by striking out the words
“these rules” and inserting in lieu thereof the words “this
rule”;

On page two, subsection 3.1., by striking out the words
“as they are defined” and inserting in lieu thereof the word
“used”;

On page two, subsection 3.2., by striking out the words
“shall mean” and inserting in lieu thereof the word “means”;

On page two, subsection 3.3., by striking out the words
“shall herein refer” and inserting in lieu thereof the word
“means”;

On page three, subsection 4.1., by striking out the words
“these rules” and inserting in lieu thereof the words “this
rule”;

On page four, subsection 5.2., by striking out
“department of labor” and inserting in lieu thereof
“Department of Labor”;

On page four, subsection 5.2., after the word “Provided,”
by striking out “However,”;
On page four, subsection 5.3., line three, after the word “training” by striking out the comma and the word “provided” and inserting in lieu thereof a colon and the words “Provided, That” and by striking out the word “manufacturers” and inserting in lieu thereof the word “manufacturers”;

On page four, subsection 5.3., after the words “limited to” by changing the semi-colon to a colon;

On page five, subsection 6.1., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page five, subsection 6.2., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page eight, subparagraph 6.10.4.a.1., by striking out §56-4-6" and inserting in lieu thereof “56 CSR 4-6";

On page nine, subsection 6.14., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On page nine, by striking out subsection 6.15. in its entirety;

On pages ten and eleven, by striking out subsection 7.4. in its entirety;

On page eleven, by redesignating subdivision 8.1.1. as subsection 8.2. and redesignating the remaining subsections accordingly;

On page eleven, by redesignating subdivision 8.3.1. as subsection 8.5. and redesignating the remaining subsections accordingly;
On page fifteen, subsection 8.13., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

On pages fifteen and sixteen, by striking out subsection 8.15. in its entirety;

On page seventeen, subsection 9.10., by striking out the words “these rules” and inserting in lieu thereof the words “this rule”;

And,

On page twenty, by striking out subsection 9.18. in its entirety.

(b) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, authorized under the authority of sections six and thirty-eight, 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 eighteenth day of January, two thousand seven, relating to the Office of Miners Health Safety and Training (standards for certification of coal mine electricians, 48 CSR 7), is authorized, with the following amendments:

“On page three, subsection 4.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “8.3”;

On page four, section five, by designating the last two paragraphs of the section as subsections 5.2. and 5.3., respectively;

On page four, section six, by designating the second paragraph of the section as subsection 6.2. and by redesignating the following subsection accordingly;

On page five, section six, by designating the last paragraph of the section as subsection 6.4.;
On page five, subsection 8.1., by striking out the words “Section 8.2.1.” and inserting in lieu thereof the words “Section 8.3”;

On pages five and six, by striking out subdivision 8.2.1. in its entirety and inserting in lieu thereof the following:

“8.3. Criteria and standards for alternative electrical training programs must be adopted by unanimous approval of the Director and the Board of Miner Training, Education and Certification. An alternative electrical training program will not become effective until approved by the Secretary of State as an emergency rule or by the Legislature as an amendment to this rule.” and redesignating the remaining subsection accordingly;

And,

On page six, section nine, by designating the last paragraph of the section as subsection 9.3.”.

§64-10-2. Bureau of Employment Programs.

The legislative rule filed in the State Register on the twenty-sixth day of July, two thousand six, authorized under the authority of section six, article two, chapter twenty-one-a, of this code, modified by the Bureau of Employment Programs to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twelfth day of January, two thousand seven, relating to the Bureau of Employment Programs (requiring state agencies to revoke or not to grant, issue or renew approval documents with employing units on the bureau’s default list, 96 CSR 1), is authorized.

§64-10-3. Division of Forestry.

The legislative rule filed in the State Register on the twenty-second day of June, two thousand six, authorized under the authority of section three-a, 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
twelfth day of January, two thousand seven, relating to the
Division of Forestry (ginseng, 22 CSR 1), is authorized, with
the following amendments:

On page two, section three, by striking out “3.1.”;
On page three, by redesignating subdivision 6.1.1. as
subsection 6.2. and by redesignating the remaining
subsections accordingly;
On page four, section seven, by striking out “7.1.”;
On page four, section eight, by striking out “8.1.”;
On page five, by redesignating subdivision paragraph
9.2.2.1. as subdivision 9.2.2.;
On page five, section ten, by striking out “10.1.”;
On page six, section eleven, by striking out “11.1.”;
And,
On page six, subsection 13.2., after the words “Freedom
of Information Act” by striking out the remainder of the
subsection and inserting in lieu thereof the following: “as
having a significant commercial value to the extent permitted
by W. Va. Code §29B-1-4(1).”.

§64-10-4. Division of Natural Resources.

(a) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand six, authorized under
the authority of section twenty-three-a, article two, chapter
twenty, of this code, 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-eighth day of July, two thousand six, authorized under
the authority of section seven, article one, chapter twenty, of
this code, relating to the Division of Natural Resources
(special boating rules, 58 CSR 26), is authorized.

(c) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand six, 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 December, two thousand six, relating to the Division
of Natural Resources (deer hunting, 58 CSR 50), is
authorized.

(d) The legislative rule filed in the State Register on the
twenty-eighth day of July, two thousand six, 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 second day
of November, two thousand six, relating to the Division of
Natural Resources (wildlife disease management, 58 CSR
69), is authorized, with the amendments:

On page 2, subsection 2.3, line eight, after the word
“landscape” and the period, by striking the remainder of the
subsection and inserting in lieu thereof, the following: “The
Director shall, at least annually after the establishment of a
containment area, review and evaluate any and all new
information relating to wildlife disease epidemiology and
surveillance to determine whether any such designation of a
containment area should be modified or rescinded and shall
report these findings to the Natural Resources Commission.
Prior to the establishment of a containment area, the Director
shall consult with:

2.3.a. wildlife biologists within the Wildlife Resources
Section that are knowledgeable of wildlife diseases;
2.3.b. a Department of Agriculture veterinarian knowledgeable of wildlife diseases;
2.3.c. conservation officers familiar with local and regional landscape features; and
2.3.d. the Natural Resources Commission.”;
And,
On page 3, by striking subsection 4.1 and inserting the following, “4.1. It is illegal to feed cervids or other wildlife in a containment area as determined by the Director and established for the management, control or eradication of chronic wasting disease, bovine tuberculosis, avian influenza or other wildlife diseases. Provided, that song and insectivorous birds may be fed so long as the person or persons feeding the same shall not do so in a manner that causes a congregation of cervids or other wildlife or in a manner that said person or persons reasonably should have known would cause a congregation of cervids or other wildlife. Provided further, that captive cervids may be fed inside cervid facilities permitted by the Division of Natural Resources.”.
(e) The legislative rule filed in the State Register on the twenty-eighth day of July, two thousand six, 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 second day of November, two thousand six, relating to the Division of Natural Resources (public use of campgrounds and recreation areas in West Virginia state wildlife management areas under the Division of Natural Resources, 58 CSR 70), is authorized, with the following amendments:
On page one, subsection 2.2., by striking out the word “shall” and inserting in lieu thereof the word “may”;
LEVIES Ch. 159]

76 On page two, section three, by striking out “3.1.”;
77 On page two, subsection 2.18., by striking out the word
78 “shall” and inserting in lieu thereof the word “may”;
79 And,
80 On page two, by striking out subsection 3.2. in its
81 entirety.

CHAPTER 159

(S.B. 360 - By Senators Bowman and Kessler)

[Passed February 14, 2007; in effect from passage.]
[Approved by the Governor on February 28, 2007.]

AN ACT to amend and reenact §11-8-9 of the Code of West
Virginia, 1931, as amended, relating to extending the time a
local levying body may meet as a levying body.

Be it enacted by the Legislature of West Virginia:

That §11-8-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. LEVIES.

§11-8-9. Meetings of local levying bodies.

1 (a) Each local levying body shall hold a meeting or
2 meetings between the seventh and twenty-eighth days of
3 March for the transaction of business generally and
4 particularly for the business herein required.
(b) When a levy is placed on the ballot for consideration during a primary election, each local levying body may extend its time to meet as a levying body until the first day of June of that year.

CHAPTER 160

(Com. Sub. for H.B. 2048 - By Delegate Overington)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §10-1-5 of the Code of West Virginia, 1931, as amended, relating to clarifying public library board service areas as determined by the Library Commission; and providing for appointment of members at large from the service area.

Be it enacted by the Legislature of West Virginia:

That §10-1-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-5. Board of library directors -- Qualifications; term of office; vacancies; removal; no compensation.

(a) Whenever a public library is established under this article, the governing authority or authorities shall appoint a board of directors with five members chosen with reference to their fitness for such office, from:
(1) The citizens of the library’s service area, as determined by the Library Commission; or

(2) The county in which the library is located.

(b) The board of directors for a regional library shall consist of not less than five nor more than ten members, with a minimum of one member from each county in the region. The total number of directors and the apportionment of directors by county shall be determined by joint action of the governing authorities concerned.

(c) The term of office for a director is five years from the first day of July following the appointment. Directors may only serve two consecutive terms, and may serve until their successors are appointed and qualified.

(d) For a new board of directors under this article, the initial appointment of the directors shall be staggered. Thereafter all appointments shall be for terms of five years.

(e) Vacancies in the board shall be immediately reported by the board to the governing authority and filled by appointment. Vacancies for an unexpired term shall be immediately reported by the board to the governing authority and filled by appointment for the remainder of the term only.

(f) A director may be removed for just cause in the manner provided by the bylaws of the library board.

(g) No compensation shall be paid to any director.
AN ACT to amend and reenact §38-5B-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §59-1-11 of said code, all relating to establishing a flat fee for certain services rendered by circuit clerks; eliminating other miscellaneous fees charged by circuit clerks; clarifying that clerk will send copy of suggestee execution by certified mail; and authorizing the circuit clerk to assess a fee for creating and administering certain special funds.

Be it enacted by the Legislature of West Virginia:

That §38-5B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §59-1-11 of said code be amended and reenacted, all to read as follows:

Chapter
38. Liens.
59. Fees; Allowances and Costs; Newspapers; Legal Advertisements.
ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGESTION OF PUBLIC OFFICERS.

§38-5B-4. Notice to judgment debtor of execution against salary or wages; time for service on officer of suggestee.

A certified copy of an execution issued under this article against salary or wages shall be served by the clerk of the court who issued the execution upon the judgment debtor or his or her agent authorized to accept service of process, by certified mail, return receipt requested, and delivery restricted to the addressee. The day and hour of mailing shall be clearly noted on the face of the original execution and the officer to whom it is delivered for collection shall not make service upon the proper officer until the expiration of five days from that time.

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:
(1) For instituting any civil action under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding, one hundred forty-five dollars, of which thirty dollars of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and ten dollars shall be deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, two hundred sixty dollars, of which ten dollars of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after the first day of July, one thousand nine hundred ninety-nine, for instituting an action for divorce, separate maintenance or annulment, one hundred thirty-five dollars;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, eighty-five dollars; and

(5) For petitioning for an expedited modification of a child support order, thirty-five dollars.

(b) In addition to the foregoing fees, the following fees shall likewise be charged and collected:

(1) For preparing an abstract of judgment, five dollars;
(2) For any transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, fifty cents;

(3) For action on suggestion, twenty-five dollars;

(4) For issuing an execution, twenty-five dollars;

(5) For issuing or renewing a suggestee execution, twenty-five dollars;

(6) For vacation or modification of a suggestee execution, one dollar;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate's court, three dollars;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, ten dollars, of which five dollars of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, fifty cents;

(11) For additional service (plaintiff or appellant) where any case remains on the docket longer than three years, for each additional year or part year, twenty dollars; and
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(12) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, fifty dollars, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) The clerk shall tax the following fees for services in any criminal case against any defendant convicted in such court:

(1) In the case of any misdemeanor, eighty-five dollars; and

(2) In the case of any felony, one hundred five dollars, of which ten dollars of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) The clerk of a circuit court shall charge and collect a fee of twenty-five dollars per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;
(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection may be construed as authorizing the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(e) The clerk of a circuit court shall charge and collect a fee of ten dollars for services rendered by the clerk for processing of bailpiece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(f) No clerk shall be required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury, except on order of the court or in compliance with the provisions of law governing such fees, costs or accounts.
AN ACT to repeal §43-2-4 and §43-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §43-2-1, §43-2-2 and §43-2-3 of said code, all relating to updating the mortality tables and interest rate used in the valuation of a life estate; and repealing antiquated sections relating to inchoate right of dower.

Be it enacted by the Legislature of West Virginia:

That §43-2-4 and §43-2-5 of the Code of West Virginia, 1931, as amended, be repealed; and that §43-2-1, §43-2-2 and §43-2-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. VALUATION OF LIFE ESTATES.

§43-2-2. Rule of calculation.


1 When a party as a tenant for life, or in dower, or otherwise, is entitled to the annual interest on a sum of money, or is entitled to the use of any estate, or any part thereof, or of the proceeds arising therefrom by a sale or otherwise, and is willing to accept a gross sum in lieu thereof, or the party liable for such interest, or affected by such claim, has the right to pay a gross sum in lieu thereof, or if a court
in any proceeding decrees a gross sum to be paid in lieu thereof, or if it shall be desirable for any purpose to ascertain
the value thereof, the sum to be paid or the present value thereof shall be calculated according to the following chart:

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1470
§43-2-2. Rule of calculation.

1 Calculate the interest at five and six-tenths percent upon
2 the sum to the income of which or upon the value of the
3 property to the use of which the person is entitled. Multiply
4 this interest by the present value of an annuity of one dollar
5 as set opposite the person's age in the table and the product is
6 the gross value of the life estate of such person therein.


1 Suppose a person whose age is fifty is tenant for life in
2 the whole of an estate worth $18,000. The annual interest on
3 that sum at five and six-tenths percent is $1,008. The present
4 value of an annuity of one dollar at the age of fifty, as
5 appears by the table in the annuity column, is $13.3158,
6 which multiplied by $1,008, the amount of the annual
7 interest, gives $13,422.33 as the gross value of such life
8 estate in the premises or the proceeds thereof.
AN ACT to amend and reenact §31B-13-1301 of the Code of West Virginia, 1931, as amended, relating to allowing acupuncturists to form professional limited liability companies.

Be it enacted by the Legislature of West Virginia:

That §31B-13-1301 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.


1 As used in this article:

2 (1) "Licensing board" means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

3 (2) "Professional limited liability company" means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

4 (3) "Professional service" means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen,

1472
AN ACT to amend and reenact §50-3-4 of the Code of West Virginia, 1931, as amended, relating to deposit of certain moneys collected in magistrate court.

Be it enacted by the Legislature of West Virginia:

That §50-3-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-4. Disposition of costs; magistrate court fund.

(a) All costs collected in magistrate courts in a civil proceeding pursuant to the provisions of section one of this article and all costs collected in magistrate courts in a criminal proceeding pursuant to the provisions of section two of this article shall be submitted on or before the tenth day of the month following the month of their collection to the magistrate court clerk along with any information that may be required by the rules of the Supreme Court of Appeals and by the rules of the State Auditor.
(b)(1) The special county fund known as the magistrate court fund established in each county by chapter thirty-three, Acts of the Legislature, regular session, one thousand nine hundred seventy-six, as amended and reenacted in subsequent Acts of the Legislature, is hereby continued. The moneys credited to the fund may be used solely for the purposes provided in this section.

(2) The magistrate court clerk of each county shall pay the sum of ten dollars collected in magistrate court for each civil and criminal proceeding into the magistrate court fund during each fiscal year until there is paid a sum equal to fifteen thousand dollars multiplied by the number of magistrates authorized for the county.

(3) A county may, in accordance with the supervisory rules of the Supreme Court of Appeals, appropriate and spend from the fund such sums as are necessary to defray the expenses of providing services to magistrate courts.

(c)(1) There is hereby created in the State Treasury a special escrow account designated as the Magistrate Court Surplus Account. The moneys credited to the account may be used solely for the purposes provided in this subsection.

(2) Beginning on the first day of July, two thousand, all costs collected during a fiscal year in excess of the sum specified in subdivision (2), subsection (b) of this section shall be deposited in the Magistrate Court Surplus Account in the State Treasury.

(3) Beginning on the first day of September, two thousand one, and on the first day of September of each year thereafter, in accordance with the supervisory rules of the Supreme Court of Appeals, funds from the Magistrate Court Surplus Account deposited therein as excess costs collected in the prior fiscal year pursuant to the provisions of subdivision (2) of this subsection shall be disbursed as a
supplement to any county magistrate court fund which generated less than fifteen thousand dollars per magistrate in the prior fiscal year in accordance with the provisions of this subsection.

(4) The amount disbursed to a county magistrate court fund from the Magistrate Court Surplus Account, when combined with the court costs generated by the magistrate court fund of the county in the prior fiscal year, may not exceed fifteen thousand dollars per magistrate.

(5) The disbursements described in subdivision (3) of this subsection shall be made as follows:

(A) There shall be distributed to each county magistrate court fund that generated less than nine thousand dollars in the prior fiscal year the sum of nine thousand dollars less the amount of court costs generated by the county magistrate court fund in the prior fiscal year. To the extent that the funds available for this disbursement are insufficient to fully fund this disbursement, the funds available shall be disbursed to these counties on a pro rata basis.

(B) Any funds that remain available for disbursement after disbursements made pursuant to paragraph (A) of this subdivision shall be disbursed in equal shares to each county magistrate court fund that generated less than fifteen thousand dollars per magistrate in the prior fiscal year. The shares to be disbursed to each county magistrate court fund are to be equal to the number of magistrates in the county. Any disbursement made under this paragraph shall be subject to the limitations specified in subdivision (4) of this subsection.

(6) Any funds that remain available in the Magistrate Court Surplus Account after the disbursements have been made pursuant to the provisions of paragraphs (A) and (B), subdivision (5) of this subsection shall be deposited by the State Treasurer into the General Revenue Fund of the state.
AN ACT to amend and reenact §50-3-7 of the Code of West Virginia, 1931, as amended, relating to authorizing magistrate courts to assess a fee of twenty-five dollars for criminal records checks.

Be it enacted by the Legislature of West Virginia:

That §50-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-7. Records of magistrate court; reports.

(a) Records of the judicial transactions of magistrate court shall be kept as required by the rules of the Supreme Court of Appeals. If, after judgment is rendered in a matter, no appeal is filed within the time allotted, the records of the proceedings shall be forwarded to the magistrate court clerk. The records shall be maintained by the magistrate court clerk in accordance with the rules of the Supreme Court of Appeals.

Records of the financial dealings of the magistrate court shall be kept as may be required by the rules of the State Auditor, who shall promulgate the rules only after consultation with the Supreme Court of Appeals.

The magistrate court shall prepare and submit the
14 reports as may be required by the rules of the Supreme Court of Appeals or by the State Auditor.

16 (b) (1) Upon receipt of a written request, the magistrate court clerk shall perform a criminal history record search of criminal records in his or her possession. Each request shall be accompanied by a 25-dollar fee for each name that is to be the subject of the records search.

21 (2) The provisions of this subsection shall not apply to:

22 (A) Federal, state, county or municipal officials;

23 (B) Court-appointed attorneys;

24 (C) Prosecuting attorneys; and

25 (D) Persons utilizing court provided public access terminals.

27 (3) All moneys collected pursuant to this subsection shall be remitted to the general fund in the State Treasury on or before the tenth day of the following month.

CHAPTER 166

(Com. Sub. for S.B. 393 - By Senator Bowman)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-1a, relating to the Marketing and Communications Office; creating the Marketing and Communications Office in the Department of Commerce; authorizing the office to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5B-1-1a, to read as follows:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-1a. Marketing and Communications Office.

(a) There is hereby created in the Department of Commerce the Marketing and Communications Office. The office is created to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity or person.

(b) The office is authorized to charge for goods and services it provides to other state agencies. The Secretary of the Department of Commerce shall approve a fee schedule determining the amounts that may be charged for goods and services provided by the office to other state agencies.

(c) All moneys collected shall be deposited in a special account in the State Treasury to be known as the Department of Commerce Marketing and Communications Operating Fund. Expenditures from the fund shall be for the operation of the office 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 two, chapter eleven-b of this code: Provided, That for the fiscal year ending the thirtieth day of June, two thousand eight, expenditures are authorized from collections and shall
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be expended at the discretion of the Secretary of the Department of Commerce rather than pursuant to appropriation by the Legislature.

(d) Any balance remaining at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with the purposes set forth in this section.

(e) The Department of Commerce shall develop and maintain a system of annual or more frequent performance measures useful in gauging the efficiency and effectiveness of the office’s marketing and communications activities. The measures shall also reflect the office’s efficiency and effectiveness with respect to commercially available marketing and communications services and any private sector benchmarks which might be identified or created. For the purposes of this section, “performance measures” means income, output, quality, self-sufficiency and outcome metrics.

(f) Beginning on the first day of January, two thousand eight, and annually every year thereafter, the Secretary of the Department of Commerce shall report to the Joint Committee on Government and Finance, the Joint Standing Committee on Finance and the Joint Commission on Economic Development on the performance of the office. This report is to include a statement of the performance measurements for the office developed by the Secretary of the Department of Commerce and an analysis of the office’s performance.

(g) Pursuant to the provisions of article ten, chapter four of this code, the Marketing and Communications Office 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 §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-9 of said code, all relating to confidentiality, disclosure and authorization for disclosure of mental health information obtained in the course of treatment or evaluation of individuals.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-9 of said code be amended and reenacted, all to read as follows:

Article 3. Confidentiality.
   5. Involuntary Hospitalization.

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

(a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the
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accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client's or patient's physical, mental or emotional condition; any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient, and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information may be disclosed:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to sections two, three or four, article five of this chapter;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

(5) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and

(6) Without the patient’s consent as provided for under the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C. F. R. §164.506 for thirty days from the date of admission to a mental health
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No consent or authorization for the transmission or disclosure of confidential information is effective unless it is in writing and signed by the patient or client by his or her legal guardian. Every person signing an authorization shall be given a copy.

Every person requesting the authorization shall inform the patient, client or authorized representative that refusal to give the authorization will in no way jeopardize his or her right to obtain present or future treatment.

Article 5. Involuntary Hospitalization.


(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, mental retardation or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be deprived of such rights. Involuntary commitment pursuant to this article does not of itself relieve the patient of legal capacity.
(b) Each patient of a mental health facility receiving services from the facility shall receive care and treatment that is suited to his or her needs and administered in a skillful, safe and humane manner with full respect for his or her dignity and personal integrity.

(c) Every patient has the following rights regardless of adjudication of incompetency:

1. Treatment by trained personnel;

2. Careful and periodic psychiatric reevaluation no less frequently than once every three months;

3. Periodic physical examination by a physician no less frequently than once every six months; and

4. Treatment based on appropriate examination and diagnosis by a staff member operating within the scope of his or her professional license.

(d) The chief medical officer shall cause to be developed within the clinical record of each patient a written treatment plan based on initial medical and psychiatric examination not later than seven days after he or she is admitted for treatment. The treatment plan shall be updated periodically, consistent with reevaluation of the patient. Failure to accord the patient the requisite periodic examinations or treatment plan and reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental health facility for each patient treated by the facility. The record shall contain information on all matters relating to the admission, legal status, care and treatment of the patient and shall include all pertinent documents relating to the patient. Specifically, the record shall contain results of periodic examinations, individualized treatment programs, evaluations and reevaluations, orders for treatment, orders for application for mechanical restraint and accident reports, all signed by the personnel involved.
(f) Every patient, upon his or her admission to a hospital and at any other reasonable time, shall be given a copy of the rights afforded by this section.

(g) The Secretary of 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 protect the personal rights of patients not inconsistent with this section.

CHAPTER 168

(Com. Sub. for S.B. 117 - By Senators Oliverio and Hunter)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §27-6A-10 and §27-6A-11, all relating to the determination of a person's competency to stand trial and of criminal responsibility generally; addressing court jurisdiction over persons found not guilty by reason of mental illness; defining terms; requiring release from jurisdiction of the court under certain circumstances; requiring periodic review of person found incompetent to stand trial; establishing time limits for motions and hearings; adding provisions for forensic evaluations and evaluators; addressing evaluations of diminished capacity and dangerousness; providing for responsibility of costs; and requiring the Department of Health and Human Resources to establish policies and procedures related to rates and reimbursements for evaluations and related services.
Be it enacted by the Legislature of West Virginia:

That §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8 and §27-6A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §27-6A-10 and §27-6A-11, all to read as follows:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.

§27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition.

§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness.

§27-6A-5. Release of acquitee to less restrictive environment; discharge from jurisdiction of the court.

§27-6A-6. Judicial hearing of defendant's defense other than not guilty by reason of mental illness.

§27-6A-8. Credit for time; expenses.

§27-6A-9. Competency to be adjudicated in juvenile court.

§27-6A-10. Medications and management of court-ordered individuals.

§27-6A-11. Payment to forensic evaluators.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

(a) For purposes of this article:

(1) A "qualified forensic psychiatrist" is:

(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed post-graduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and...
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(B) Board eligible or board certified in forensic psychiatry by the American Board of Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program accredited by the Accreditation Council of Graduate Medical Education to make the evaluator eligible for board certification by the American Board of Psychiatry and Neurology in forensic psychiatry or has two years of experience in completing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(2) A “qualified forensic psychologist” is:

(A) A licensed psychologist licensed under the laws of this state to practice psychology; and

(B) Board eligible or board certified in forensic psychology by the American Board of Professional Psychology or actively enrolled in good standing in a West Virginia training program approved by the American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic psychology or has at least two years of experience in performing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

(3) A “qualified forensic evaluator” is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.

(4) “Department” means the Department of Health and Human Resources.

(b) No qualified forensic evaluator may perform a forensic evaluation on an individual under this chapter if the qualified forensic evaluator has been the individual’s treating
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§27-6A-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.

(a) Whenever a court of record has reasonable cause to believe that a defendant in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial it shall, sua sponte or upon motion filed by the state or by or on behalf of the defendant, at any stage of the proceedings order a forensic evaluation of the defendant’s competency to stand trial to be conducted by one or more qualified forensic psychiatrists, or one or more qualified forensic psychologists. If a court of record or other judicial officer orders both a competency evaluation and a criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed first, and if a qualified forensic evaluator is of the opinion that a defendant is not competent to stand trial, no criminal responsibility or diminished capacity evaluation may be conducted without further order of the court. The initial forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant resides there.

(b) The court shall require the party making the motion for the evaluation, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluations within ten business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;
(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser included criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any court-ordered evaluation which may include record review and defendant interview and shall, within ten business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic evaluator’s opinion that the defendant is not competent to stand trial, the report shall state whether the defendant is substantially likely to attain competency within the next three months and, in order to attain competency to stand trial, whether the defendant requires inpatient management in a mental health facility. The court may extend the ten-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed thirty days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator’s opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section or there have been one or more inadequate or conflicting forensic evaluations
performed pursuant to subsection (a) of this section and the
court has reason to believe that an observation period is
necessary in order to determine if a person is competent to
stand trial, the court may order the defendant be committed
to a mental health facility designated by the department for
a period not to exceed fifteen days and an additional
evaluation be conducted in accordance with subsection (a) of
this section by one or more qualified forensic psychiatrists,
or a qualified forensic psychiatrist and a qualified forensic
psychologist. The court shall order that at the conclusion of
the fifteen-day observation period the sheriff of the county
where the defendant was charged shall take immediate
custody of the defendant for transportation and disposition as
ordered by the court.

(e) A mental health facility not operated by the state is
not obligated to admit and treat a defendant under this
section.

§27-6A-3. Competency of defendant to stand trial
determination; preliminary finding; hearing;
evidence; disposition.

(a) Within five days of the receipt of the qualified
forensic evaluator’s report and opinion on the issue of
competency to stand trial, the court of record shall make a
preliminary finding on the issue of whether the defendant is
competent to stand trial and if not competent whether there
is a substantial likelihood that the defendant will attain
competency within the next three months. If the court of
record orders, or if the state or defendant or defendant’s
counsel within twenty days of receipt of the preliminary
findings requests, a hearing, then a hearing shall be held by
the court of record within fifteen days of the date of the
preliminary finding, absent good cause being shown for a
continuance. If a hearing order or request is not filed within
twenty days, the preliminary findings of the court become the
final order.
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(b) At a hearing to determine a defendant's competency to stand trial the defendant has the right to be present and he or she has the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings, except trial by jury.

(c) The court of record pursuant to a preliminary finding or hearing on the issue of a defendant's competency to stand trial and with due consideration of any forensic evaluation conducted pursuant to sections two and three of this article shall make a finding of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether he or she has a rational as well as a factual understanding of the proceedings against him or her.

(d) If at any point in the proceedings the defendant is found competent to stand trial, the court of record shall forthwith proceed with the criminal proceedings.

(e) If at any point in the proceedings the defendant is found not competent to stand trial, the court of record shall at the same hearing, upon the evidence, make further findings as to whether or not there is a substantial likelihood that the defendant will attain competency within the next ensuing three months.

(f) If at any point in the proceedings the defendant is found not competent to stand trial and is found substantially likely to attain competency, the court of record shall in the same order, upon the evidence, make further findings as to
whether the defendant requires, in order to attain competency, inpatient management in a mental health facility. If inpatient management is required, the court shall order the defendant be committed to an inpatient mental health facility designated by the department to attain competency to stand trial and for a competency evaluation. The term of this commitment may not exceed three months from the time of entry into the facility. However, upon request by the chief medical officer of the mental health facility and based on the requirement for additional management to attain competency to stand trial, the court of record may, prior to the termination of the three-month period, extend the period up to nine months from entry into the facility. A forensic evaluation of competency to stand trial shall be conducted by a qualified forensic evaluator and a report rendered to the court, in like manner as subsections (a) and (c), section two of this article, every three months until the court determines the defendant is not competent to stand trial and is not substantially likely to attain competency.

(g) If at any point in the proceedings the defendant is found not competent to stand trial and is found not substantially likely to attain competency and if the defendant has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person, the criminal charges shall be dismissed. The dismissal order may, however, be stayed for twenty days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five of this chapter. The defendant shall be immediately released from any inpatient facility unless civilly committed.

(h) If at any point in the proceedings the defendant is found not competent to stand trial and is found not substantially likely to attain competency, and if the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person, then the court shall determine on
the record the offense or offenses of which the person
otherwise would have been convicted, and the maximum
sentence he or she could have received. A defendant shall
remain under the court’s jurisdiction until the expiration of
the maximum sentence unless the defendant attains
competency to stand trial and the criminal charges reach
resolution or the court dismisses the indictment or charge.
The court shall order the defendant be committed to a mental
health facility designated by the department that is the least
restrictive environment to manage the defendant and that will
allow for the protection of the public. Notice of the maximum
sentence period with an end date shall be provided to the
mental health facility. The court shall order a qualified
forensic evaluator to conduct a dangerousness evaluation to
include dangerousness risk factors to be completed within
thirty days of admission to the mental health facility and a
report rendered to the court within ten business days of the
completion of the evaluation. The medical director of the
mental health facility shall provide the court a written clinical
summary report of the defendant’s condition at least annually
during the time of the court’s jurisdiction. The court’s
jurisdiction shall continue an additional ten days beyond any
expiration to allow civil commitment proceedings to be
instituted by the prosecutor pursuant to article five of this
chapter. The defendant shall then be immediately released
from the facility unless civilly committed.

(i) If the defendant has been ordered to a mental health
facility pursuant to subsection (h) of this section and the court
receives notice from the medical director or other responsible
official of the mental health facility that the defendant no
longer constitutes a significant danger to self or others, the
court shall conduct a hearing within thirty days to consider
evidence, with due consideration of the qualified forensic
evaluator’s dangerousness report or clinical summary report
to determine if the defendant shall be released to a less
restrictive environment. The court may order the release of
the defendant only when the court finds that the defendant is
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When a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated as a result of any treatment, the court, in its discretion, may make the continuance of appropriate treatment, including medications, a condition of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that a defendant ordered to a mental health facility pursuant to said subsection who is released on the condition that he or she continues treatment does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that defendant is in violation of the conditions of his or her release, the court shall reorder the defendant to a mental health facility under the authority of the department which is the least restrictive setting that will allow for the protection of the public.

The prosecuting attorney may, by motion, and in due consideration of any chief medical officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to subsection (i) of this section to be determined by the court of record while the defendant remains under the jurisdiction of the court, and in which case the court may order a forensic evaluation of competency to stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like manner as subsections (a) and (c), section two of this article.

Any defendant found not competent to stand trial may at any time petition the court of record for a hearing on his or her competency.

Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient management to
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158 attain competency, of dismissal of charges, of order for
159 inpatient management to protect the public, of release or
160 conditional release, or any hearings to be conducted pursuant
161 to this section shall be sent to the prosecuting attorney, the
162 defendant and his or her counsel, and the mental health
163 facility. Notice of court release hearing or order for release or
164 conditional release pursuant to subsection (i) of this section
165 shall be made available to the victim or next of kin of the
166 victim of the offense for which the defendant was charged.
167 The burden is on the victim or next of kin of the victim to
168 keep the court apprised of that person’s current mailing
169 address.

170 (m) A mental health facility not operated by the state is
171 not obligated to admit or treat a defendant under this section.

§27-6A-4. Criminal responsibility or diminished capacity
evaluation; court jurisdiction over persons
found not guilty by reason of mental illness.

1 (a) If the court of record finds, upon hearing evidence or
2 representations of counsel for the defendant, that there is
3 probable cause to believe that the defendant's criminal
4 responsibility or diminished capacity will be a significant
5 factor in his or her defense, the court shall appoint one or
6 more qualified forensic psychiatrists or qualified forensic
7 psychologists to conduct a forensic evaluation of the
8 defendant's state of mind at the time of the alleged offense.
9 However, if a qualified forensic evaluator is of the opinion
10 that the defendant is not competent to stand trial that no
11 criminal responsibility or diminished capacity evaluation may
12 be conducted. The forensic evaluation may not be conducted
13 at a state inpatient mental health facility unless the defendant
14 has been ordered to a mental health facility in accordance
15 with subsection (c), section two of this article or subsection
16 (f) or (h), section three of this article. To the extent possible,
17 qualified forensic evaluators who have conducted evaluations
18 of competency under subsection (a), section two of this
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chapter shall be used to evaluate criminal responsibility or diminished capacity under this subsection.

The court shall require the party making the motion for the evaluations, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within ten business days of its evaluation order. The information shall include, but not be limited to:

1. A copy of the warrant or indictment;
2. Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports and transcripts of preliminary hearings, if any;
3. Any available psychiatric, psychological, medical or social records that are considered relevant;
4. A copy of the defendant's criminal record; and
5. If the evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

A qualified forensic evaluator shall schedule and arrange within fifteen days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant interview and shall, within ten business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of criminal responsibility and if ordered, on diminished capacity. The court may extend the ten-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed thirty days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for
a written report if the qualified forensic evaluator’s opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility designated by the department for a period not to exceed fifteen days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by one or more qualified forensic psychiatrists or one or more qualified forensic psychologists. At the conclusion of the observation period, the court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquitee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquitee shall remain under the court’s jurisdiction until the expiration of the maximum sentence or until discharged by the court. The court shall commit the acquitee to a mental health facility designated by the department that is the least restrictive environment to manage the acquitee and that will allow for the protection of the public. Notice of the maximum sentence period with end date shall be provided to the mental health facility. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include
MENTALLY ILL PERSONS

dangerousness risk factors to be completed within thirty days of admission to the mental health facility and a report rendered to the court within ten business days of the completion of the evaluation. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant’s condition at least annually during the time of the court’s jurisdiction. The court’s jurisdiction continues an additional ten days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five of this chapter. The defendant shall then be immediately released from the facility unless civilly committed.

(f) In addition to any court-ordered evaluations completed pursuant to section two, three or four of this article, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

(g) A mental health facility not operated by the state is not required to admit or treat a defendant or acquitee under this section.

§27-6A-5. Release of acquitee to less restrictive environment; discharge from jurisdiction of the court.

(a) If, at any time prior to the expiration of the court’s jurisdiction, the chief medical officer or responsible official of the mental health facility to which an acquitee has been ordered pursuant to subsection (e), section four of this article believes that the acquitee is not mentally ill or does not have significant dangerousness risk factors associated with mental illness, he or she shall file with the court of record notice of the belief and shall submit evidence in support of the belief to include a forensic evaluation dangerousness report conducted in like manner as said subsection and recommendations for treatment, including medications, that reduce or eliminate the dangerousness risk factors associated
with mental illness. The court of record shall hold a hearing
within thirty days of receipt of the notice to consider
evidence as to whether the acquitee shall be released from the
mental health facility to a less restrictive environment. Notice
of the hearing shall be made available to the prosecuting
attorney responsible for the charges brought against the
acquitee at trial, the acquitee and his or her counsel and the
mental health facility. If upon consideration of the evidence
the court determines that an acquitee may be released from a
mental health facility to a less restrictive setting, the court
shall order, within fifteen days of the hearing, the acquitee be
released upon terms and conditions, if any, the court
considers appropriate for the safety of the community and the
well-being of the acquitee. Any terms and conditions
imposed by the court must be protective and therapeutic in
nature, not punitive. When a defendant's dangerousness risk
factors associated with mental illness are reduced or
eliminated as a result of any treatment, the court, in its
discretion, may make the continuance of appropriate
treatment, including medications, a condition of the
defendant’s release from inpatient hospitalization. The court
shall maintain jurisdiction of the defendant in accordance
with said subsection. Upon notice that an acquitee released
on the condition that he or she continues appropriate
treatment does not continue his or her treatment, the
prosecuting attorney responsible for the charges brought
against the acquitee at trial shall, by motion, cause the court
to reconsider the acquitee’s release and upon a showing that
the acquitee is in violation of the conditions of his or her
release, the court may reorder the acquitee to a mental health
facility designated by the department which is the least
restrictive setting appropriate to manage the acquitee and
protect the public.

(b) No later than thirty days prior to the release from a
mental health facility or other management setting of an
acquitee because of the expiration of the court's jurisdiction
as set in accordance with subsection (e), section four of this
50 article, if the acquitee’s physician, psychologist, chief
51 medical officer or other responsible party is of the opinion
52 that the acquitee’s mental illness renders the acquitee to be
53 likely to cause serious harm to self or others, the supervising
54 physician, psychologist, chief medical officer or other
55 responsible party shall notify the court of record who shall
56 promptly notify the prosecuting attorney in the county of the
57 court having jurisdiction of the opinion and the basis for the
58 opinion. Following notification, the prosecuting attorney may
59 file, within ten days, a civil commitment application against
60 the acquitee pursuant to article five of this chapter.

§27-6A-6. Judicial hearing of defendant's defense other than not
guilty by reason of mental illness.

If a defendant who has been found to be not competent to
stand trial believes that he or she can establish a defense of
not guilty to the charges pending against him or her, other
than the defense of not guilty by reason of mental illness, the
defendant may request an opportunity to offer a defense
thereto on the merits before the court which has criminal
jurisdiction. If the defendant is unable to obtain legal counsel,
the court of record shall appoint counsel for the defendant to
assist him or her in supporting the request by affidavit or
other evidence. If the court of record in its discretion grants
such a request, the evidence of the defendant and of the state
shall be heard by the court of record sitting without a jury. If
after hearing such petition the court of record finds
insufficient evidence to support a conviction, it shall dismiss
the indictment and order the release of the defendant from
criminal custody. The release order, however, may be stayed
for ten days to allow civil commitment proceedings to be
instituted by the prosecutor pursuant to article five of this
chapter: Provided, That a defendant committed to a mental
health facility pursuant to subsection (f) or (h), section three
of this article shall be immediately released from the facility
unless civilly committed.
§27-6A-8. Credit for time; expenses.

(a) If a person is convicted of a crime, any time spent in involuntary confinement in a mental health facility as a result of being charged with the crime shall be credited to the sentence.

(b) All inpatient care and treatment shall be paid by the department.

§27-6A-9. Competency to be adjudicated in juvenile court.

In a similar manner and in accordance with procedures set forth in subsection (a), section two of this article or subsection (a), section four of this article, a juvenile court may order a qualified forensic evaluator to conduct an evaluation of a juvenile to aid the court in its disposition under chapter forty-nine of this code. In a similar manner and in accordance with procedures set forth in subsection (d), section two of this article or subsection (d), section four of this article, a juvenile court may order a period of observation for an alleged delinquent or neglected juvenile at a mental health facility designated by the department to aid the court in its disposition. The period of observation may not exceed fifteen days.

§27-6A-10. Medications and management of court-ordered individuals.

(a) At any time pursuant to section two, three or four of this article an individual is court ordered to a mental health facility, the individual has the right to receive treatment under the standards of medical management.

(b) An individual with health care decision-making capacity may refuse medications or other management unless court-ordered to be treated or unless a treating clinician determines that medication or other management is necessary.
in emergencies or to prevent danger to the individual or others.

§27-6A-11. Payment to forensic evaluators.

The department shall pay qualified forensic evaluators for all matters related to conducting a court ordered forensic evaluation. The department shall develop and implement a process for prompt payment to qualified forensic evaluators. The department shall establish policies and procedures for establishing a maximum rate schedule for each of the four evaluation types (competency to stand trial, criminal responsibility, diminished capacity, dangerousness) to include all efforts towards the completion of each evaluation such as scheduling and administrative tasks, record review, psychological and other testing, interviews, report writing, research, preparation and consultation. Such policies and procedures shall include input from provider representatives as necessary and appropriate. Any rate schedule shall be fair and reasonable. The department shall consider requests for payment in excess of established rates or other expenses for good cause shown.

CHAPTER 169

(S.B. 435 - By Senators Bowman, Bailey, Barnes, Boley, Foster, Jenkins, Kessler, McCabe, Minard, Stollings, Sypolt, White and Yoder)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §7A-1-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §7A-4-1 of said code; and to amend and reenact §7A-7-6 of said code, all relating to metro government; clarifying the constitutional authority for the creation of a metro government; increasing the
time frame for a charter review committee to conclude its study; providing plans for metro government formation; and providing that municipalities other than the principal city are not automatically consolidated into a metro government.

Be it enacted by the Legislature of West Virginia:

That §7A-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §7A-4-1 of said code be amended and reenacted; and that §7A-7-6 of said code be amended and reenacted, all to read as follows:

Article

ARTICLE 1. GENERAL PROVISIONS.

§7A-1-4. Authority to consolidate.

1 (a) A municipality, county or metro government in this state is authorized to form a consolidated local government with another municipality, county or metro government upon approval by the voters of the affected areas.

5 (b) The Legislature has the constitutional authority to permit municipalities to consolidate pursuant to section thirty-nine-a, article VI of the West Virginia Constitution permitting home rule for municipalities. Pursuant to section thirteen, article IX of the West Virginia Constitution permitting reformation of county commissions, the Legislature has the authority to permit counties to consolidate and municipalities and counties to consolidate to create a new executive or legislative tribunal, or both, in the form of a metro government that performs both the duties of a municipality and a county.

ARTICLE 4. CHARTER REVIEW COMMITTEE.

§7A-4-1. Study by charter review committee and draft of proposed charter.
(a) The charter review committee shall study matters relating to the feasibility of consolidation.

(b) The charter review committee shall further address in the charter the powers and authority of the proposed consolidated local government, including, but not limited to:

1. The territory encompassed by the consolidated local government, including all affected municipalities, counties and metro governments, or parts thereof, to be included in the boundaries of the consolidated local government;

2. The fiscal impact of the proposed consolidation on the affected municipalities, counties and metro governments including:
   
   (A) The cost of providing services by the consolidated local government;

   (B) Projected revenues available to the consolidated local government based upon proposed classifications and tax structures; and

   (C) Projected economies of scale resulting from consolidation;

3. The name of the proposed consolidated local government;

4. The seat of the proposed consolidated local government;

5. The representation plan based upon population for the territory encompassed by the consolidation consistent with state and federal law to include consideration of under represented areas and minorities;

6. The creation of the governing body of the proposed consolidated local government, including an odd number of governing officers of not less than five, their qualifications for holding office, titles, powers, duties, terms of office,
manner of election, compensation, method of removal, role 
of constitutional officers in new government and other 
pertinent matters consistent with state and federal law;

(7) The effective date of the charter once consolidation is 
approved by the electorate;

(8) A procedure for the efficient and timely transition of 
specified services, functions and responsibilities from each 
affected municipality, county and metro government and its 
respective departments and agencies to the consolidated local 
government to occur within two years from the date the 
charter becomes effective; and

(9) The method by which a consolidated local government 
may dissolve after existing for a minimum of six years.

(c) The charter review committee shall complete its study 
and draft a proposed charter within two years from the date 
of its organizational meeting.

(d) With regard to a proposed metro consolidation, the 
metro charter review committee may utilize one of the plans 
for organizing a municipal government described in section 
two, article three, chapter eight of this code in the charter for 
the metro government, but is not limited to these forms of 
government.

ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.

§7A-7-6. Municipalities within territory remain incorporated in 
metro government.

Municipalities, other than the principal city, are not 
automatically consolidated into the metro government. Upon 
the approval by voters of metro consolidation, municipalities 
within the territory of the metro government remain 
incorporated and continue to perform their functions as 
permitted by law unless dissolved or consolidated pursuant 
to section eight of this article.
AN ACT to amend and reenact §22A-1-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §22A-2-4a; to amend and reenact §22A-2-5 of said code; to amend and reenact §22A-7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-7; and to amend said code by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all relating generally to coal mine health and safety; authorizing Director of the Office of Miners’ Health, Safety and Training, upon a finding of imminent danger, to issue closure orders for mines under certain circumstances; prohibiting the use of a belt conveyor entry as an intake air course and providing exceptions thereto; providing requirements for the design, construction and inspection of seals and the atmospheric monitoring of sealed areas; prohibiting use of certain seals and providing for requirements for remediation of existing seals under certain circumstances; prohibiting the use of bottom mining and providing exceptions thereto; requiring continuing education for underground mine foremen-fire bosses and setting course requirements; continuing the Mine Safety Technology Task Force; legislative findings; establishing powers and duties of task force; reimbursement; and task force consultation in approval of safety devices.
MINERS' HEALTH, SAFETY AND TRAINING  [Ch. 170

Be it enacted by the Legislature of West Virginia:

That §22A-1-15 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 §22A-2-4a; that §22A-2-5 of said code be amended and reenacted; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-7; and that said code be amended by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all to read as follows:

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


(a) If upon any inspection of a coal mine an authorized representative of the director finds that an imminent danger exists, the representative shall determine the area throughout which the danger exists and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the area until an authorized representative of the director determines that the imminent danger no longer exists.

(b) If upon any inspection of a coal mine an authorized representative of the director finds that there has been a violation of the law, but the violation has not created an imminent danger, he or she shall issue a notice to the operator
or the operator's agent fixing a reasonable time for the
abatement of the violation. If upon the expiration of the
period of time, as originally fixed or subsequently extended,
an authorized representative of the director finds that the
violation has not been totally abated, and if the director also
finds that the period of time should not be further extended,
the director shall find the extent of the area affected by the
violation and shall promptly issue an order requiring the
operator of the mine or the operator's agent to cause
immediately all persons, except those referred to in
subdivisions (1), (2), (3) and (4), subsection (e) of this
section, to be withdrawn from and to be prohibited from
entering the area until an authorized representative of the
director determines that the violation has been abated.

(c) If upon any inspection of a coal mine an authorized
representative of the director finds that an imminent danger
exists in an area of the mine, in addition to issuing an order
pursuant to subsection (a) of this section, the director shall
review the compliance record of the mine.

(1) A review of the compliance record conducted in
accordance with this subsection shall, at a minimum, include
a review of the following:

(A) Any closure order issued pursuant to subsection (a)
of this section;

(B) Any closure order issued pursuant to subsection (b)
of this section;

(C) Any enforcement measures taken pursuant to this
chapter, other than those authorized under subsections (a) and
(b) of this section;

(D) Any evidence of the operator’s lack of good faith in
abating violations at the mine;
(E) Any accident, injury or illness record that demonstrates a serious safety or health management problem at the mine;

(F) The number of employees at the mine, the size, layout and physical features of the mine and the length of time the mine has been in operation; and

(G) Any mitigating circumstances.

(2) If, after review of the mine’s compliance record, the director determines that the mine has a history of repeated significant and substantial violations of a particular standard caused by unwarrantable failure to comply or a history of repeated significant and substantial violations of standards related to the same hazard caused by unwarrantable failure to comply and the history or histories demonstrate the operator’s disregard for the health and safety of miners, the director shall issue a closure order for the entire mine and shall immediately issue an order requiring the operator of the mine or the operator's agent to cause immediately all persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be prohibited from entering the mine until a thorough inspection of the mine has been conducted by the office and the director determines that the operator has abated all violations related to the imminent danger and any violations unearthed in the course of the inspection.

(d) All employees on the inside and outside of a mine who are idled as a result of the posting of a withdrawal order by a mine inspector shall be compensated by the operator at their regular rates of pay for the period they are idled, but not more than the balance of the shift. If the order is not terminated prior to the next working shift, all the employees on that shift who are idled by the order are entitled to full compensation by the operator at their regular rates of pay for
the period they are idled, but for not more than four hours of
the shift.

(e) The following persons are not required to be
withdrawn from or prohibited from entering any area of the
coal mine subject to an order issued under this section:

(1) Any person whose presence in the area is necessary,
in the judgment of the operator or an authorized
representative of the director, to eliminate the condition
described in the order;

(2) Any public official whose official duties require him
or her to enter the area;

(3) Any representative of the miners in the mine who is,
in the judgment of the operator or an authorized
representative of the director, qualified to make coal mine
examinations or who is accompanied by such a person and
whose presence in the area is necessary for the investigation
of the conditions described in the order; and

(4) Any consultant to any of the persons set forth in this
subsection.

(f) Notices and orders issued pursuant to this section shall
contain a detailed description of the conditions or practices
which cause and constitute an imminent danger or a violation
of any mandatory health or safety standard and, where
appropriate, a description of the area of the coal mine from
which persons must be withdrawn and prohibited from
entering.

(g) Each notice or order issued under this section shall be
given promptly to the operator of the coal mine or the
operator's agent by an authorized representative of the
director issuing the notice or order and all the notices and
orders shall be in writing and shall be signed by the representative and posted on the bulletin board at the mine.

(h) A notice or order issued pursuant to this section may be modified or terminated by an authorized representative of the director.

(i) Each finding, order and notice made under this section shall promptly be given to the operator of the mine to which it pertains by the person making the finding, order or notice.

(j) Definitions. — For the purposes of this section only, the following terms have the following meanings:

(1) “Unwarrantable failure” means aggravated conduct, constituting more than ordinary negligence, by a mine operator in relation to a violation of this chapter of the code; and

(2) “Significant and substantial violation” shall have the same meaning as that established in 6 FMSHRC 1 (1984).

ARTICLE 2. UNDERGROUND MINES.

§22A-2-4a. Use of belt air.

§22A-2-5. Unused and abandoned parts of mine.

§22A-2-4a. Use of belt air.

(a) Definitions. — For purposes of this section, “belt air” means the use of a belt conveyor entry as an intake air course to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed.

(b) Upon the effective date of the enactment of this section, belt air may not be used to ventilate the working sections of a mine or areas where mechanized mining equipment is being installed or removed: Provided, That if an
alternative method of ventilation will at all times guarantee no less than the same measure of protection afforded the miners of an underground mine by the foregoing or if the application of the foregoing to an underground mine will result in a diminution of safety to the miners in the mine, the director may approve the interim use of belt air pursuant to the following:

(1) For those operators using belt air pursuant to a ventilation plan approved by the director in accordance with the provisions of section two of this article prior to the effective date of the enactment of this section, the director shall cause an inspection to be made of the mine ventilation system and ventilation equipment. The director may allow the continued use of belt air in that mine if he or she determines that: (i) The use meets the minimum requirements of 30 CFR 75.350(b); and (ii) the use, as set forth in the ventilation plan and as inspected, will at all times guarantee no less than the same measure of protection afforded the miners of the mine if belt air were not used, or that the prohibition of the use of belt air in the mine will result in a diminution of safety to the miners in the mine.

(2) For those operators submitting on or after the effective date of the enactment of this section, a ventilation plan proposing the use of belt air to the director pursuant to section two of this article, the director shall immediately upon receipt of the plan give notice of the plan to the representative of the miners in that mine and cause any investigation to be made that the director considers appropriate: Provided, That the investigation shall include a review of any comments on the plan submitted by the representative of miners in the mine. Upon receiving the report of the investigation, the director shall make findings of fact and issue a written decision, incorporating in the decision his or her findings and an order approving or denying the use of belt air pursuant to the terms of the ventilation plan. To
approve the use of belt air pursuant to a ventilation plan, the
director shall, at a minimum, determine that: (i) The
operator’s proposed use of belt air meets the minimum
requirements of 30 CFR 75.350(b); and (ii) approval of the
proposed use of belt air will at all times guarantee no less
than the same measure of protection afforded the miners of
the mine if belt air were not used, or that the prohibition of
the use of belt air in the mine will result in a diminution of
safety to the miners in the mine.

(3) The interim use of belt air shall be accurately
reflected in operator’s plan of ventilation, as approved by the
director in accordance with the provisions of section two of
this article.

(c) Upon completion of the independent scientific and
engineering review concerning the use of belt air and the
composition and fire retardant properties of belt materials in
underground coal mining by the technical study panel created
pursuant to the provisions of 30 U. S. C. §963 and the
Secretary of the United States Department of Labor’s
corresponding report to Congress pursuant to the review, the
Board of Coal Mine Health and Safety shall, within thirty
days of the Secretary of Labor’s report to Congress, provide
the Governor with its recommendations, if any, for the
enactment, repeal or amendment of any statute or rule which
would enhance the safe ventilation of underground mines and
the health and safety of miners: Provided, That at least sixty
days after the Secretary of Labor’s report to Congress, the
Board of Coal Mine Health, Safety and Training shall
promulgate emergency rules regulating the use of belt air in
light of that report: Provided, however, That the provisions of
subsections (a) and (b) of this section shall expire and no
longer have any force and effect upon the filing of such
emergency rules.
§22A-2-5. Unused and abandoned parts of mine.

(a) In any mine, all workings which are abandoned after the first day of July, one thousand nine hundred seventy-one, shall be sealed or ventilated. If the workings are sealed, the sealing shall be done with incombustible material in a manner prescribed by the director and one or more of the seals of every sealed area shall be fitted with a pipe and cap or valve to permit the sampling of gases and measuring of hydrostatic pressure behind the seals. For the purpose of this section, working within a panel shall not be considered to be abandoned until the panel is abandoned.

(b) Air that has passed through an abandoned area or an area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in any working mine, unless permission is granted by the director with unanimous agreement of the technical and mine safety review committee. Air that has been used to ventilate seals shall not be used to ventilate any working place in any working mine. Air which has been used to ventilate an area from which the pillars have been removed shall not be used to ventilate any working place in a mine, except that the air, if it does not contain 0.25 volume percent or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries. Before sealed areas, temporary or permanent, are reopened, the director shall be notified.

(c) On or after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, a professional engineer registered with the Board of Registration for Professional Engineers pursuant to article thirteen, chapter thirty of this
code shall certify the design of all new seals as meeting the
criteria established by the director. Every seal design shall
have the professional engineer’s certificate and signature, in
addition to his or her seal, in the following form:

“I the undersigned, do hereby certify that this seal design
is, to the best of my knowledge, in accordance with all
applicable requirements under state and federal law, rules and
regulations.

____________________ P.E.”

(d) On or after the effective date of the amendment and
reenactment of this section during the regular session of the
Legislature in two thousand seven, the director shall approve
the construction of all new seals in accordance with rules
authorized in this section. The construction shall also be:

(1) Certified by the mine foreman-fire boss of the mine
as being in accordance with the design certified by a
professional engineer pursuant to subsection (c) of this
section; and

(2)(A) Constructed of solid concrete blocks and in
accordance with the other provisions of 30 CFR 75.335(a)(1); or

(B) Constructed in a manner that the director has
approved as having the capability to withstand pressure equal
to or greater than a seal constructed in accordance with the
provisions of 30 CFR 75.335(a)(1).

(e) On or after the effective date of the amendment and
reenactment of this section during the regular session of the
Legislature in two thousand seven, the operator shall inspect
the physical condition of all seals and measure the atmosphere behind all seals in accordance with protocols developed by the Board of Coal Mine Health and Safety, pursuant to rules authorized in this section and consistent with a mine-specific atmospheric measurement plan submitted to and approved by the director. The atmospheric measurements shall include, but not be limited to, the methane and oxygen concentrations and the barometric pressure. The atmospheric measurements also shall be recorded with ink or indelible pencil in a book kept for that purpose on the surface at a location designated by the operator. The protocols shall specify appropriate methods for inspecting the physical condition of seals, measuring the mine atmosphere in sealed workings, and inerting the mine atmosphere behind the seals, where appropriate.

(f)(1) In all mines containing workings sealed using seals constructed in accordance with the provisions of 30 CFR 75.335(a)(2) which are constructed: (A) Of cementitious foam blocks; or (B) with methods or materials that the Board of Coal Mine Health and Safety determines do not provide an adequate level of protection to miners, the operator shall, pursuant to a plan submitted to and approved by the director, remediate the seals by either enhancing the seals or constructing new seals in place of or immediately outby the seals. After being remediated, all seals must have the capability to withstand pressure equal to or greater than a seal constructed in accordance with the provisions of 30 CFR 75.335(a)(1). The design, development, submission and implementation of the remediation plan is the responsibility of the operator of each mine. Pursuant to rules authorized in this section, the Board of Coal Mine Health and Safety shall specify appropriate methods of enhancing the seals.
(2) Notwithstanding any provision of this code to the contrary, if the director determines that any seal described in subdivision (1) of this subsection is incapable of being remediated in a safe and effective manner, the mine foreman-fire boss shall, at least once every twenty-four hours, inspect the physical condition of the seal and measure the atmosphere behind the seal. The daily inspections and measurements shall otherwise be performed in accordance with the protocols and atmospheric measurement plan established pursuant to subsection (e) of this section.

(g) Upon the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, second mining of lower coal on retreat, also known as bottom mining, shall not be permitted in workings that will be sealed unless an operator has first submitted and received approval by the director of a remediation plan that sets forth measures that will be taken to mitigate the effects of remnant ramps and other conditions created by bottom mining on retreat which can increase the force of explosions originating in and emanating out of workings that have been bottom mined. The director shall require that certification in a manner similar to that set forth in subsection (c) of this section shall be obtained by the operator from a professional engineer and the mine foreman-fire boss for the plan design and plan implementation, respectively.

(h) No later than sixty days after the effective date of the amendment and reenactment of this section during the regular session of the Legislature in two thousand seven, the Board of Coal Mine Health and Safety shall develop and promulgate rules pursuant to the provisions of section four, article six of this chapter to implement and enforce the provisions of this section.
(i) Upon the issuance of mandatory health and safety standards relating to the sealing of abandoned areas in underground coal mines by the Secretary of the United States Department of Labor pursuant to 30 U. S. C. § 811, as amended by section ten of the federal Mine Improvement and New Emergency Response Act of 2006, the director, working in consultation with the Board of Coal Mine Health and Safety, shall, within thirty days, provide the Governor with his or her recommendations, if any, for the enactment, repeal or amendment of any statute or rules which would enhance the safe sealing of abandoned mine workings and the health and safety of miners.

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.

§22A-7-5. Board powers and duties.

(a) The board shall establish criteria and standards for a program of education, training and examination to be required of all prospective miners and miners prior to their certification in any of the various miner specialties requiring certification under this article or any other provision of this code. The specialties include, but are not limited to, underground miner, surface miner, apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss, shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the director may by rule further subdivide the classifications for certification.

(b) The board may require certification in other miner occupational specialties: Provided, That no new specialty
may be created by the board unless certification in a new specialty is made desirable by action of the federal government requiring certification in a specialty not enumerated in this code.

(c) The board may establish criteria and standards for a program of preemployment education and training to be required of miners working on the surface at underground mines who are not certified under the provisions of this article or any other provision of this code.

(d) The board shall set minimum standards for a program of continuing education and training of certified persons and other miners on an annual basis: Provided, That the standards shall be consistent with the provisions of section seven of this article. Prior to issuing the standards, the board shall conduct public hearings at which the parties who may be affected by its actions may be heard. The education and training shall be provided in a manner determined by the director to be sufficient to meet the standards established by the board.

(e) The board may, in conjunction with any state, local or federal agency or any other person or institution, provide for the payment of a stipend to prospective miners enrolled in one or more of the programs of miner education, training and certification provided in this article or any other provision of this code.

(f) The board may also, from time to time, conduct any hearings and other oversight activities required to ensure full implementation of programs established by it.

(g) Nothing in this article empowers the board to revoke or suspend any certificate issued by the director of the Office of Miners' Health, Safety and Training.
46 (h) The board may, upon its own motion or whenever
47 requested to do so by the director, consider two certificates
48 issued by this state to be of equal value or consider training
49 provided or required by federal agencies to be sufficient to
50 meet training and education requirements set by it, the
51 director, or by the provisions of this code.

§22A-7-7. Continuing education requirements for
underground mine foreman-fire boss.

1 (a) An existing underground mine foreman-fire boss
2 certified pursuant to this article shall complete the
3 continuing education requirements in this section within
4 two years from the effective date of this section and every
5 two years thereafter. An underground mine foreman-fire
6 boss certified pursuant to this article on or after the effective
7 date of this section shall complete the continuing education
8 requirements in this section within two years of their
9 certification and every two years thereafter. The continuing
10 education requirements of this section may not be satisfied
11 by the completion of other training requirements mandated
12 by the provisions of this chapter.

13 (b) In order to receive continuing education credit
14 pursuant to this section, a mine foreman-fire boss shall
15 satisfactorily complete a mine foreman-fire boss continuing
16 education course approved by the board and taught by a
17 qualified instructor approved by the director. The mine
18 foreman-fire boss shall not suffer a loss in pay while
19 attending a continuing education course. The mine foreman-
20 fire boss shall submit documentation to the office certified
21 by the instructor that indicates the required continuing
22 education has been completed prior to the deadlines set
23 forth in this subsection: Provided, That a mine foreman-fire
24 boss may submit documentation of continuing education
25 completed in another state for approval and acceptance by
26 the board.
(c) The mine foreman-fire boss shall complete at least eight hours of continuing education every two years.

(d) The content of the continuing education course shall include, but not be limited to:

1. Selected provisions of this chapter and 30 U. S. C. §801, et seq.;

2. Selected provisions of the West Virginia and federal underground coal mine health and safety rules and regulations;

3. The responsibilities of a mine foreman-fire boss;

4. Selected policies and memoranda of the Office of Miners’ Health, Safety and Training, the Board of Coal Mine Health and Safety and the Board of Miner Training, Education and Certification;

5. A review of fatality and accident trends in underground coal mines; and

6. Other subjects as determined by the Board of Miner Training, Education and Certification.

(e) The board may approve alternative training programs tailored to specific mines.

(f) Failure to complete the requirements of this section shall result in suspension of a mine foreman-fire boss certification pending completion of the continuing education requirements. During the pendency of the suspension, the individual may not perform statutory duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice of any suspension to the last address the certified mine foreman-fire boss reported to.
the director. If the requirements are not met within two years of the suspension date, the director may file a petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article one of this chapter and, upon determining that the requirements have not been met, the board of appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except upon successful completion of the examination prescribed by law for mine foremen-fire bosses or upon completion of other training requirements established by the board: Provided, that an individual having his or her mine foreman-fire boss certification suspended pursuant to this section who also holds a valid mine foreman-fire boss certification from another state may have the suspension lifted by completing training requirements established by the board.

(g) The office shall make a program of instruction that meets the requirements for continuing education set forth in this section regularly available in regions of the state, based on demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a mine foreman-fire boss capacity: Provided, that the office may collect a fee from program participants to offset the cost of the program.

(h) The office shall make available to operators and other interested parties a list of individuals whose mine foreman-fire boss certification is in suspension or has been revoked pursuant to this section.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.
§22A-11-4. Approval of devices.
§22A-11-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (1) That the first priority and concern of all persons in the coal mining industry must be the health and safety of its most precious resource -- the miner;

3 (2) That in furtherance of this priority, the provisions of article two of this chapter are designed to protect the health and safety of this state’s coal miners by requiring certain minimum standards for, among other things, certain health and safety technology used by each underground miner;

4 (3) That the proper implementation of this technology in West Virginia’s underground mines would benefit from the specialized oversight of persons with experience and competence in coal mining, coal mine health and safety and the expanding role of technology; and

5 (4) That, in furtherance of provisions of this section, it is the intent of the Legislature to create a permanent task force which, on a continuous basis, shall evaluate and study issues relating to the commercial availability and functional and operational capability of existing and emerging technologies in coal mine health and safety, as well as issues relating to the implementation, compliance and enforcement of regulatory requirements governing the technologies.


1 (a) The Mine Safety Technology Task Force, created and existing under the authority of the director pursuant to
the provisions of section six, article one of this chapter, is
continued as provided by this article.

(b) The task force shall consist of nine members who
are appointed as specified in this section:

(1) The Governor shall appoint, by and with the advice
and consent of the Senate, three members to represent the
viewpoint of operators in this state. When these members
are to be appointed, the Governor shall request from the
major trade association representing operators in this state
a list of three nominees for each position on the task force.
All nominees shall be persons with special experience and
competence in coal mine health and safety. There shall be
submitted with the list, a summary of the qualifications of
each nominee. For purposes of this subdivision, the major
trade association representing operators in this state is that
association which represents operators accounting for over
one half of the coal produced in mines in this state in the
year prior to the year in which the appointment is to be
made.

(2) The Governor shall appoint, by and with the advice
and consent of the Senate, three members who can
reasonably be expected to represent the viewpoint of the
working miners of this state. When members are to be
appointed, the Governor shall request from the major
employee organization representing coal miners within this
state a list of three nominees for each position on the task
force. The highest ranking official within the major
employee organization representing coal miners within this
state shall submit a list of three nominees for each position
on the board. The nominees shall have a background in coal
mine health and safety.
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34 (3) The Governor shall appoint, by and with the advice and consent of the Senate, one certified mine safety professional from the College of Engineering and Mineral Resources at West Virginia University;

38 (4) The Governor shall appoint, by and with the advice and consent of the Senate, one attorney with experience in issues relating to coal mine health and safety; and

41 (5) The ninth member of the task force is the director, or his or her designee, who shall serve as chair of the task force. The director shall furnish to the task force any secretarial, clerical, technical, research and other services that are necessary to the conduct of the business of the task force.

47 (c) Each appointed member of the task force shall serve at the will and pleasure of the Governor.

49 (d) Whenever a vacancy on the task force occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each vacancy shall be requested by and submitted to the Governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the task force is vacant.

58 (e) Each member of the task force shall be paid the 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. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid

(a) The task force shall provide technical and other assistance to the office related to the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, as amended and reenacted during the regular session of the Legislature in the year two thousand six, and requirements for other mine safety technologies.

(b) The task force, working in conjunction with the director, shall continue to study issues regarding the commercial availability, the functional and operational capability and the implementation, compliance and enforcement of the following protective equipment:

(1) Self-contained self-rescue devices, as provided in subsection (f), section fifty-five, article two of this chapter;

(2) Wireless emergency communication devices, as provided in subsection (g), section fifty-five, article two of this chapter;

(3) Wireless emergency tracking devices, as provided in subsection (h), section fifty-five, article two of this chapter; and
(4) Any other protective equipment required by this chapter or rules promulgated in accordance with the law that the director determines would benefit from the expertise of the task force.

(c) The task force shall on a continuous basis study, monitor and evaluate:

(1) The potential for enhancing coal mine health and safety through the application of existing technologies and techniques;

(2) Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;

(3) Emerging technological advances in coal mine health and safety; and

(4) Market forces impacting the development of new technologies, including issues regarding the costs of research and development, regulatory certification and incentives designed to stimulate the marketplace.

(d) On or before the first day of July of each year, the task force shall submit a report to the Governor and the Board of Coal Mine Health and Safety that shall include, but not be limited to:

(1) A comprehensive overview of issues regarding the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, or rules promulgated in accordance with the law;

(2) A summary of any emerging technological advances that would improve coal mine health and safety;

(3) Recommendations, if any, for the enactment, repeal or amendment of any statute which would enhance
§22A-11-4. Approval of devices.

Prior to approving any protective equipment or device that has been evaluated by the task force pursuant to the provisions of subsection (b), section three of this article, the director shall consult with the task force and review any applicable written reports issued by the task force and the findings set forth in the reports and shall consider the findings in making any approval determination.

CHAPTER 171

(H.B. 2332 - By Delegates Perry, Amores, Craig, Perdue, Campbell, Anderson, Cann and Long)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §49-5-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that magistrate courts have concurrent juvenile jurisdiction with circuit courts with regard to enforcement of laws prohibiting the possession or use of tobacco or tobacco products by minors; and giving such concurrent juvenile jurisdiction to municipal courts.
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Be it enacted by the Legislature of West Virginia:

That §49-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-2. Juvenile jurisdiction of circuit courts, magistrate courts and municipal courts; constitutional guarantees; hearings; evidence and transcripts.

(a) The circuit court has original jurisdiction of proceedings brought under this article.

(b) If during a criminal proceeding in any court it is ascertained or appears that the defendant is under the age of nineteen years and was under the age of eighteen years at the time of the alleged offense, the matter shall be immediately certified to the juvenile jurisdiction of the circuit court. The circuit court shall assume jurisdiction of the case in the same manner as cases which are originally instituted in the circuit court by petition.

(c) Notwithstanding any other provision of this article, magistrate courts have concurrent juvenile jurisdiction with the circuit court for a violation of a traffic law of West Virginia, for a violation of section nine, article six, chapter sixty, section three or section four, article nine-a, chapter sixteen, or section nineteen, article sixteen, chapter eleven of this code, or for any violation of chapter twenty of this code. Juveniles are liable for punishment for violations of these laws in the same manner as adults except that magistrate courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(d) Notwithstanding any other provision of this article, municipal courts have concurrent juvenile jurisdiction with the circuit court for a violation of any municipal ordinance
regulating traffic, for any municipal curfew ordinance which is enforceable or for any municipal ordinance regulating or prohibiting public intoxication, drinking or possessing alcoholic liquor or nonintoxicating beer in public places, any other act prohibited by section nine, article six, chapter sixty or section nineteen, article sixteen, chapter eleven of this code or underage possession or use of tobacco or tobacco products, as provided in article nine-a, chapter sixteen of this code. Municipal courts may impose the same punishment for these violations as a circuit court exercising its juvenile jurisdiction could properly impose, except that municipal courts have no jurisdiction to impose a sentence of incarceration for the violation of these laws.

(e) A juvenile may be brought before the circuit court for proceedings under this article only by the following means:

(1) By a juvenile petition requesting that the juvenile be adjudicated as a status offender or a juvenile delinquent; or

(2) By certification or transfer to the juvenile jurisdiction of the circuit court from the criminal jurisdiction of the circuit court, from any foreign court, or from any magistrate court or municipal court in West Virginia.

(f) If a juvenile commits an act which would be a crime if committed by an adult, and the juvenile is adjudicated delinquent for that act, the jurisdiction of the court which adjudged the juvenile delinquent continues until the juvenile becomes twenty-one years of age. The court has the same power over that person that it had before he or she became an adult, and has the further power to sentence that person to a term of incarceration: Provided, That any such term of incarceration may not exceed six months. This authority does not preclude the court from exercising criminal
MINORS

jurisdiction over that person if he or she violates the law after becoming an adult or if the proceedings have been transferred to the court's criminal jurisdiction pursuant to section ten of this article.

(g) A juvenile is entitled to be admitted to bail or recognizance in the same manner as an adult and shall be afforded the protection guaranteed by Article III of the West Virginia Constitution.

(h) A juvenile has the right to be effectively represented by counsel at all stages of proceedings under the provisions of this article. If the juvenile or the juvenile’s parent or custodian executes an affidavit showing that the juvenile cannot afford an attorney, the court shall appoint an attorney, who shall be paid in accordance with article twenty-one, chapter twenty-nine of this code.

(i) In all proceedings under this article, the juvenile shall be afforded a meaningful opportunity to be heard. This includes the opportunity to testify and to present and cross-examine witnesses. The general public shall be excluded from all proceedings under this article except that persons whose presence is requested by the parties and other persons whom the circuit court determines have a legitimate interest in the proceedings may attend: Provided, That in cases in which a juvenile is accused of committing what would be a felony if the juvenile were an adult, an alleged victim or his or her representative may attend any related juvenile proceedings, at the discretion of the presiding judicial officer: Provided, however, That in any case in which the alleged victim is a juvenile, he or she may be accompanied by his or her parents or representative, at the discretion of the presiding judicial officer.

(j) At all adjudicatory hearings held under this article, all procedural rights afforded to adults in criminal

1530
(k) At all adjudicatory hearings held under this article, the rules of evidence applicable in criminal cases apply, including the rule against written reports based upon hearsay.

(l) Except for res gestae, extrajudicial statements made by a juvenile who has not attained fourteen years of age to law-enforcement officials or while in custody are not admissible unless those statements were made in the presence of the juvenile's counsel. Except for res gestae, extrajudicial statements made by a juvenile who has not attained sixteen years of age but who is at least fourteen years of age to law-enforcement officers or while in custody, are not admissible unless made in the presence of the juvenile's counsel or made in the presence of, and with the consent of, the juvenile's parent or custodian, and the parent or custodian has been fully informed regarding the juvenile's right to a prompt detention hearing, the juvenile's right to counsel, including appointed counsel if the juvenile cannot afford counsel, and the juvenile's privilege against self-incrimination.

(m) A transcript or recording shall be made of all transfer, adjudicatory and dispositional hearings held in circuit court. At the conclusion of each of these hearings, the circuit court shall make findings of fact and conclusions of law, both of which shall appear on the record. The court reporter shall furnish a transcript of the proceedings at no charge to any indigent juvenile who seeks review of any proceeding under this article if an affidavit is filed stating that neither the juvenile nor the juvenile's parents or custodian have the ability to pay for the transcript.
AN ACT to amend and reenact §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, all relating to mortgage broker, lender and loan originator licenses; requiring certain licensees to license all loan originators; and permitting the Banking Commissioner to enter into information sharing agreements with other mortgage regulators.

Be it enacted by the Legislature of West Virginia:

That §31-17-1, §31-17-2 and §31-17-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-1. Definitions and general provisions.

As used in this article:

(1) "Primary mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part,
(2) "Subordinate mortgage loan" means a consumer loan made to an individual which is secured, in whole or in part, by a mortgage or deed of trust upon any interest in real property used as an owner-occupied residential dwelling with accommodations for not more than four families, which property is subject to the lien of one or more prior recorded mortgages or deeds of trust;

(3) "Person" means an individual, partnership, association, trust, corporation or any other legal entity, or any combination thereof;

(4) "Lender" means any person who makes or offers to make or accepts or offers to accept or purchases or services any primary or subordinate mortgage loan in the regular course of business. A person is considered to be acting in the regular course of business if he or she makes or accepts, or offers to make or accept, more than five primary or subordinate mortgage loans in any one calendar year;

(5) "Broker" means any person acting in the regular course of business who, for a fee or commission or other consideration, negotiates or arranges, or who offers to negotiate or arrange, or originates, processes or assigns a primary or subordinate mortgage loan between a lender and a borrower. A person is considered to be acting in the regular course of business if he or she negotiates or arranges, or offers to negotiate or arrange, or originates, processes or assigns any primary or subordinate mortgage loans in any one calendar year; or if he or she seeks to charge a borrower or receive from a borrower money or other valuable consideration in any primary or subordinate mortgage transaction before completing performance of all broker services that he or she has agreed to perform for the borrower;
"Brokerage fee" means the fee or commission or other consideration charged by a broker or loan originator for the services described in subdivision (5) of this section;

"Additional charges" means every type of charge arising out of the making or acceptance of a primary or subordinate mortgage loan, except finance charges, including, but not limited to, official fees and taxes, reasonable closing costs and certain documentary charges and insurance premiums and other charges which definition is to be read in conjunction with and permitted by section one hundred nine, article three, chapter forty-six-a of this code;

"Finance charge" means the sum of all interest and similar charges payable directly or indirectly by the debtor imposed or collected by the lender incident to the extension of credit as coextensive with the definition of "loan finance charge" set forth in section one hundred two, article one, chapter forty-six-a of this code;

"Commissioner" means the Commissioner of Banking of this state;

"Applicant" means a person who has applied for a lender's, broker's or loan originator's license;

"Licensee" means any person duly licensed by the commissioner under the provisions of this article as a lender, broker or loan originator;

"Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment, whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:
(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this article;

(13) "Affiliated" means persons under the same ownership or management control. As to corporations, limited liability companies or partnerships, where common owners manage or control a majority of the stock, membership interests or general partnership interests of one or more such corporations, limited liability companies or partnerships, those persons are considered affiliated. In addition, persons under the ownership or management control of the members of an immediate family shall be considered affiliated. For purposes of this section, "immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child and grandchildren;

(14) "Servicing" or "servicing a residential mortgage loan" means through any medium or mode of communication the collection or remittance for, or the right or obligation to collect or remit for another lender, note owner or noteholder, payments of principal, interest, including sales finance charges in a consumer credit sale, and escrow items as insurance and taxes for property subject to a residential mortgage loan; and

(15) "Loan originator" means an individual who, on behalf of a licensed mortgage broker, under the direct supervision and control of a licensee who is engaged in brokering activity, and in exchange for compensation by that broker, performs any of the services described in subsection (5) of this section.
§31-17-2. License required for lender, broker or loan originator; exemptions.

(a) No person may engage in this state in the business of lender, broker or loan originator unless and until he or she first obtains a license to do so from the commissioner, which license remains unexpired, unsuspended and unrevoked, and no foreign corporation may engage in business in this state unless it is registered with the Secretary of State to transact business in this state.

(b) An entity applying for or holding both a lender and broker license shall license all of its individual loan originators if that entity brokers a majority of its residential mortgage loans. The determination of whether an entity brokers the majority of its residential mortgage loans is based upon the most recent annual report filed with the division pursuant to section eleven of this article. A new applicant applying for both a lender license and a broker license shall license all of its loan originators unless the applicant can demonstrate, through data compiled for other state regulators, that it acts as a lender for a majority of its residential mortgage loans made.

(c) Brokerage fees, additional charges and finance charges imposed by licensed mortgage brokers, lenders and loan originators are exempt from the tax imposed by article fifteen, chapter eleven of this code beginning on the first day of January, two thousand four.

(d) The provisions of this article do not apply to loans made by the following:

(1) Federally insured depository institutions;

(2) Regulated consumer lender licensees;

(3) Insurance companies;
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(4) Any other lender licensed by and under the regular supervision and examination for consumer compliance of any agency of the federal government;

(5) Any agency or instrumentality of this state, federal, county or municipal government or on behalf of the agency or instrumentality;

(6) By a nonprofit community development organization making mortgage loans to promote home ownership or improvements for the disadvantaged which loans are subject to federal, state, county or municipal government supervision and oversight; or

(7) Habitat for Humanity International, Inc., and its affiliates providing low-income housing within this state.

Loans made subject to this exemption may be assigned, transferred, sold or otherwise securitized to any person and shall remain exempt from the provisions of this article, except as to reporting requirements in the discretion of the commissioner where the person is a licensee under this article. Nothing herein shall prohibit a broker licensed under this article from acting as broker of an exempt loan and receiving compensation as permitted under the provisions of this article.

(e) A person or entity designated in subsection (d) of this section may take assignments of a primary or subordinate mortgage loan from a licensed lender and the assignments of said loans that they themselves could have lawfully made as exempt from the provisions of this article under this section do not make that person or entity subject to the licensing, bonding, reporting or other provisions of this article except as the defense or claim would be preserved pursuant to section one hundred two, article two, chapter forty-six-a of this code.
(f) The placement or sale for securitization of a primary or subordinate mortgage loan into a secondary market by a licensee may not subject the warehouser or final securitization holder or trustee to the provisions of this article: Provided, That the warehouser, final securitization holder or trustee under an arrangement is either a licensee, or person or entity entitled to make exempt loans of that type under this section, or the loan is held with right of recourse to a licensee.

§31-17-11. Records and reports; examination of records; analysis.

(a) Every lender and broker licensee shall maintain at his or her place of business in this state, if any, or if he or she has no place of business in this state at his or her principal place of business outside this state, such books, accounts and records relating to all transactions within this article as are necessary to enable the commissioner to enforce the provisions of this article. All the books, accounts and records shall be preserved, exhibited to the commissioner and kept available as provided herein for the reasonable period of time as the commissioner may by rules require. The commissioner is hereby authorized to prescribe by rules the minimum information to be shown in the books, accounts and records.

(b) Each licensee shall file with the commissioner on or before the fifteenth day of March of each year a report under oath or affirmation concerning his or her business and operations in this state for the preceding license year in the form prescribed by the commissioner.

(c) The commissioner may, at his or her discretion, make or cause to be made an examination of the books, accounts and records of every lender or broker licensee pertaining to primary and subordinate mortgage loans made in this state under the provisions of this article, for the purpose of determining whether each lender and broker licensee is
complying with the provisions hereof and for the purpose of verifying each lender or broker licensee's annual report. If the examination is made outside this state, the licensee shall pay the cost thereof in like manner as applicants are required to pay the cost of investigations outside this state.

(d) The commissioner shall publish annually an aggregate analysis of the information furnished in accordance with the provisions of subsection (b) or (c) of this section, but the individual reports shall not be public records and shall not be open to public inspection.

(e) The commissioner may enter into cooperative and information sharing agreements with regulators in other states or with federal authorities to discharge his or her responsibilities under this article.

CHAPTER 173

(Com. Sub. for H.B. 2775 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead) [By Request of the Executive]

[Passed March 9, 2007; in effect ninety days from passage.] [Approved by the Governor on March 23, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-3c; and to amend and reenact §17A-3-4 of said code, all relating to the taxation of motor vehicles; providing an exemption for new residents of this state from payment of the privilege tax upon a showing that the applicant was not a resident of this state at the time the vehicle was purchased and the vehicle was properly
MOTOR VEHICLES

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 §11-15-3c; and that §17A-3-4 of said code be amended and reenacted, all to read as follows:

Chapter 11. Taxation
17A. Motor Vehicle Administration, Registration, Certificate of Title and Antitheft Provisions.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMER SALES AND SERVICE TAX.

§11-15-3c. Imposition of consumer sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Department of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

(a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on the first day of July, two thousand eight, all motor vehicle sales to West Virginia residents shall be subject to the consumer sales tax imposed by this article.

(b) Rate of tax on motor vehicles. -- Notwithstanding any provision of this article or article fifteen-a of this chapter to
the contrary, the rate of tax on the sale and use of a motor vehicle shall be five percent of its sale price, as defined in section two, article fifteen-b of this chapter: Provided, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used.

(c) Motor vehicles purchased out of state.-- Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a, of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

(d) Definition of Sale. -- Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, for purposes of this section "sale", "sales" or "selling" means any transfer or lease of the possession or ownership of a motor vehicle for consideration, including isolated transactions between individuals not being made in the ordinary course of repeated and successive business and also including casual and occasional sales between individuals not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

(e) Definition of Motor Vehicle. -- For purposes of this section "motor vehicle" means every propellable device in, or upon which any person or property is or may be transported or drawn upon a highway including but not limited to: automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low speed vehicles; trucks, truck tractors, and road tractors having a weight of less than
fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers, and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold down camping trailers, traveling trailers, house trailers, and motor homes; except that the term “motor vehicle” does not include: modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors, and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand pounds or greater: Provided, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors, and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear, having weight of two thousand pounds or greater; does not subject the sale or purchase of the vehicle to the consumer sales and service tax imposed by section three of this article.

(f) Exemptions. — Notwithstanding any other provision of this code to the contrary, the tax imposed by this section
shall not be subject to any exemption in this code other than the following:

(1) 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 motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than one dollar nor more than one dollar and fifty cents for each day or part of the rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where the motor vehicle has been acquired by a corporation, partnership or limited liability company from another corporation, partnership or limited liability company that is a member of the same controlled group and the entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(3) The tax imposed by this section does not apply where motor vehicle has been acquired by a senior citizen service
organization which is exempt from the payment of income

taxes under the United States Internal Revenue Code, Title 26
U.S.C. §501(c)(3) and which is recognized to be a bona fide
senior citizen service organization by the Bureau of Senior
Services existing under the provisions of article five, chapter
sixteen of this code.

(4) The tax imposed by this section does not apply to any
active duty military personnel stationed outside of West
Virginia who acquires a motor vehicle by sale within nine
months from the date the person returns to this state.

(5) The tax imposed by this section does not apply to
motor vehicles acquired by registered dealers of this state for
resale only.

(6) The tax imposed by this section does not apply to
motor vehicles acquired 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 this state as a nonprofit
corporation for protection of life or property.

(7) The tax imposed by this section does not apply to
motor vehicles acquired by an urban mass transit authority,
as defined in article twenty-seven, chapter eight of this code,
or a nonprofit entity exempt from federal and state income
tax under the Internal Revenue Code, for the purpose of
providing mass transportation to the public at large or
designed for the transportation of persons and being operated
for the transportation of persons in the public interest.

(8) The tax imposed by this section does not apply to the
registration of a vehicle owned and titled in the name of a
resident of this state if the applicant:
(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the Commissioner of Motor Vehicles may require to show bona-fide residency in this state;

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

(E) Makes application to the Division of Motor Vehicles for a title and registration, and pays all other fees required by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

(g) Division of Motor Vehicles to collect.--Notwithstanding any provision of this article, article fifteen-a, and article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax imposed by this section: Provided, That such 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.

(h) Dedication of tax to highways.--Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after
deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury, and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) Legislative rules; emergency rules. -- Notwithstanding any provision of this article, article fifteen-a, and article ten to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative 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 and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. 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 June, two thousand eight, those rules may be promulgated as emergency legislative rules, as provided in article three of said chapter.

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

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

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumer sales and service tax provisions; exceptions.
(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.

(3) The Division of Motor Vehicles may issue a
certificate of registration and title to an applicant if the
applicant provides sufficient proof to the Division of Motor
Vehicles that the applicant has paid the taxes and fees
required by this section to a motor vehicle dealership that has
gone out of business or has filed bankruptcy proceedings in
the United States bankruptcy court and the taxes and fees so
required to be paid by the applicant have not been sent to the
division by the motor vehicle dealership or have been
impounded due to the bankruptcy proceedings: Provided,
That the applicant makes an affidavit of the same and assigns
all rights to claims for money the applicant may have against
the motor vehicle dealership to the Division of Motor
Vehicles.

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

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

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.

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

The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U.S.C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the senior services
(13) The tax imposed by this section does not apply to the titling of any vehicle operated by an urban mass transit authority as defined in article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(14) The tax imposed by this section does not apply to the transfer of a title to a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the commissioner may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the commissioner may require to show bona-fide residency in this state;

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

(E) Makes application to the division for a title and registration, and pays all other fees required by this chapter within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article:

Provided, That a period of amnesty of three months be established by the commissioner during the calendar year two thousand seven, during which time any resident of this state, having titled his or her vehicle in a previous state of residence, may pay without penalty any fees required by this
chapter and transfer the title of his or her vehicle in accordance with the provisions of this section.

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

(d) Beginning on the first of July, two thousand and eight, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-b, article fifteen, chapter eleven of this code.
(e) 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 or chapter eleven of this code 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.
AN ACT to amend and reenact §17A-2-21 and §17A-2-23 of the Code of West Virginia, 1931, as amended; to amend and reenact §17A-3-3 and §17A-3-14 of said code; to amend and reenact §17A-4-10 of said code; to amend and reenact §17A-9-7 of said code; to amend and reenact §17A-10-8 of said code; to amend and reenact §17B-2-7c of said code; to amend and reenact §17C-5A-2a, §17C-5A-3 and §17C-5A-3a of said code; to amend and reenact §17E-1-23 of said code; and to amend and reenact §20-7-12 of said code, all relating to the regulation and registration of motor vehicles by the Division of Motor Vehicles; consolidating and eliminating certain fees collected by the Division of Motor Vehicles; authorizing the Division of Motor Vehicles to refuse to register and to suspend or revoke motor vehicle registrations of motor carriers whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration; and allowing vehicle owners to retain certain vehicles declared totaled; requiring the surrender of title and registration certificate; eliminating the special revenue account; increasing criminal penalties; and clarifying certain definitions.

Be it enacted by the Legislature of West Virginia:

That §17A-2-21 and §17A-2-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-3 and §17A-3-14 of said code be amended and reenacted; that §17A-4-10 of said code be amended and reenacted; that §17A-9-7 of said code
be amended and reenacted; that §17A-10-8 of said code be amended and reenacted; that §17B-2-7c of said code be amended and reenacted; that §17C-5A-2a, §17C-5A-3 and §17C-5A-3a of said code be amended and reenacted; that §17E-1-23 of said code be amended and reenacted; and that §20-7-12 of said code be amended and reenacted, all to read as follows:

Chapter
17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
17B. Motor Vehicle Driver’s Licenses.
17C. Traffic Regulations and Laws of the Road.
17E. Uniform Commercial Driver’s License Act.

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

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.


1 Effective the first day of July, two thousand seven, there is hereby created a special revenue account within the State Treasury to be known as the Motor Vehicle Fees Fund which shall consist of moneys paid into the account in accordance with other provisions of this code and any additional sums appropriated by the Legislature. All other taxes and fees
imposed and collected under the provisions of this chapter shall be paid to the State Treasurer in the manner provided by law and credited to the State Road Fund.

§17A-2-23. Worthless checks tendered for fees and taxes; penalty.

If a check tendered to the Division of Motor Vehicles is returned to the division unpaid for any reason, there shall be a penalty of ten dollars to be paid to the division in addition to the amount due the division. This penalty applies to checks tendered for any fee or tax authorized to be collected by the division and is in addition to any other penalties imposed in this code: Provided, That in the event a specific penalty is set forth for the nonpayment or late payment of fees and taxes, the penalty set forth in this section applies only to the extent that the penalty exceeds any specific penalty for nonpayment or late payment.

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.

§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-3-3. Application for registration; statement of insurance or other proof of security to accompany application; criminal penalties; fees; special revolving fund.

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 application shall bear the
signature of the owner or his or her authorized agent, written
with pen and ink, and the application shall contain:

(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
35 weight as stated in the application is subject to the single-axle
36 load limit set forth in said chapter.

37 (d) Each applicant shall state whether the vehicle is or is
38 not to be used in the public transportation of passengers or
39 property, or both, for compensation and if used for
40 compensation, or to be used, the applicants shall certify that
41 the vehicle is used for compensation and shall, as a condition
42 precedent to the registration of the vehicle, obtain a
43 certificate of convenience or permit from the Public Service
44 Commission unless otherwise exempt from this requirement
45 in accordance with chapter twenty-four-a of this code.

46 (e) A statement under penalty of false swearing that
47 liability insurance is in effect and will continue to be in effect
48 through the entire term of the vehicle registration period
49 within limits which shall be no less than the requirement of
50 section two, article four, chapter seventeen-d of this code,
51 which shall contain the name of the applicant's insurer, the
52 name of the agent or agency which issued the policy and the
53 effective date of the policy and any other information
54 required by the Commissioner of Motor Vehicles or that the
55 applicant has qualified as a self-insurer meeting the
56 requirements of section two, article six of said chapter and
57 that as a self-insurer he or she has complied with the
58 minimum security requirements as established in section two,
59 article four of said chapter.

60 (1) Intentional lapses of insurance coverage. --

61 (A) In the case of a periodic use or seasonal vehicle, as
62 defined in section three, article two-a, chapter seventeen-d of
63 this code, the owner may provide, in lieu of other statements
64 required by this section, a statement, under penalty of false
65 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.

(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.

§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
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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.

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. Except as otherwise provided herein, effective the first day of July, two thousand seven, all fees currently held in the special revolving fund used in the administration of this section and all fees collected by the division shall be deposited in the State Road Fund.

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.

Specially arranged registration plates may be issued as follows:

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. All fees collected by the division shall be deposited in the State Road Fund: 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, remarries 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 the State Road Fund, 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 the State Road Fund, 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 the State Road Fund, 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 educational organization shall collect this fee and forward it to the division for deposit in the State Road Fund. 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
245 state regarding registration and licensure of motor vehicles;
246 and payment of all required fees.

247 (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 the State Road Fund.

253 (11) The division may issue specified certified firefighter registration plates as follows:

255 (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.

266 (B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit stating that the applicant is justified in having a registration with the requested insignia; proof of compliance with all laws of this state regarding registration and licensure of motor vehicles; and payment of all required fees. The firefighter certification department, section or division of the West Virginia University fire service extension shall notify the commissioner in writing immediately when a firefighter loses his or her certification. If a firefighter loses his or her certification, the commissioner may not issue him or her a license plate under this subsection.
(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into the State Road Fund.

(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 the State Road Fund.

(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 the State Road Fund.
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, remarryes 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 the State Road Fund: 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, remarry 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 the State Road Fund.

(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 the State Road Fund.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.

(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

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

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.
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395 (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.

399 (19) Racing theme special registration plates:

400 (A) The division may issue a series of special registration plates displaying National Association for Stock Car Auto Racing themes.

403 (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 the State Road Fund.

408 (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 the State Road Fund.

414 (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:

418 (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
(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 shall be collected by the division and deposited in the State Road Fund: 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 shall be collected by the
division and deposited in the State Road Fund: Provided, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

(C) A surviving spouse may continue to use his or her deceased spouse’s honorably discharged veteran’s registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(22) The division may issue special volunteer firefighter registration plates as follows:

(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman’s helmet insignia on the left side of the license plate.

(B) Each application submitted pursuant to this subdivision shall be accompanied by an affidavit signed by the applicant’s fire chief, stating that the applicant is a volunteer firefighter and justified in having a registration plate with the requested insignia. The applicant must comply with all other laws of this state regarding registration and licensure of motor vehicles and must pay all required fees.

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into the State Road Fund.
(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 shall be collected by the division and deposited in the State Road Fund.

(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 the State Road Fund.
(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

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.

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 shall be collected by the division and deposited in the State Road Fund.

(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.

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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and
deposited in the State Road Fund.

(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 shall be collected by the division and
deposited in the State Road Fund. 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 the State Road Fund.

(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 the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund: 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 the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(36) The division may issue special registration plates for persons retired from any branch of the armed services of the United States as follows:

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration
(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund: Provided, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

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

(37) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with or support for Fairmont State College as follows:

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(39) The division shall issue special registration plates promoting education as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children’s education-related theme as prescribed and designated by the commissioner and the State Superintendent of Schools.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(40) The division may issue members of the 82nd Airborne Division Association special registration plates as follows:
(A) The division may issue a special registration plate for members of the 82nd Airborne Division Association upon receipt of a guarantee from the organization of a minimum of one hundred applicants. The insignia on the plate shall be designed by the commissioner.

(B) Upon appropriate application, the division may issue members of the 82nd Airborne Division Association in good standing, as determined by the governing body of the organization, a special registration plate for any number of vehicles titled in the name of the qualified applicant.

(C) The division shall charge a special one-time initial application fee of ten dollars for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into the State Road Fund: Provided, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s special 82nd Airborne Division Association registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

(41) The division may issue special registration plates to survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency.

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the State Police or the law-enforcement division of the 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 the State Road Fund, 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 shall be collected by the
division and deposited in the State Road Fund.

(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 shall be collected by the
division and deposited in the State Road Fund.

(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 shall be deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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”.

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(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be collected by the division and deposited in the State Road Fund.

(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:
MOTOR VEHICLES

(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 shall be collected by the division and deposited in the State Road Fund.

(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 shall be deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.
(54) 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 shall be deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(55) 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 shall be collected by the division and deposited in the State Road Fund.

(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 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 shall be collected by the division and deposited in the State Road Fund.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

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 shall be collected by the division and deposited in the State Road Fund.

(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.
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 shall be collected by the division and deposited in the State Road Fund.

(D) The provisions of subsection (d) of this section are not applicable for the issuance of the special license plates designated by this subdivision.

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 shall be collected by the division and deposited in the State Road Fund.

(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:

(1) The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least one hundred persons complete an application and deposit with the organization a check to cover the first year’s basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That an organization or group that is unsuccessful in obtaining the minimum number of applications may not request reconsideration of a special plate until at least two years have passed since the effective date of the original authorization.

(2) The commissioner may not begin the design or production of any license plates authorized by this section
for which membership or affiliation with a particular
organization is not required until at least two hundred fifty
registrants complete an application and deposit a fee with
the division to cover the first year’s basic registration fee,
one-time design and manufacturing fee and additional
annual fee if applicable. If the commissioner fails to receive
the required number of applications within six months of the
effective date of the authorizing legislation, the plate will
not be produced and will require legislative reauthorization:
*Provided*, That if the minimum number of applications is not
satisfied within the six months of the effective date of the
authorizing legislation, a person may not request
reconsideration of a special plate until at least two years
have passed since the effective date of the original
authorization.

(e)(1) Nothing in this section requires a charge for a free
prisoner of war license plate or a free recipient of the
Congressional Medal of Honor license plate for a vehicle
titled in the name of the qualified applicant as authorized by
other provisions of this code.

(2) A surviving spouse may continue to use his or her
deceased spouse’s prisoner of war license plate or
Congressional Medal of Honor license plate until the
surviving spouse dies, remarry 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 the
State Road Fund, 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.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

*§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of a total loss claim to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: Provided, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner

*Clerk's Note: This section was also amended by S.B. 169 (Chapter 176), which passed prior to this act.
choose to retain the vehicle and the vehicle has not been
determined to be a cosmetic total loss in accordance with
subsection (d) of this section, the insurance company or
insurer shall also require the owner to surrender the vehicle
registration certificate. The term "total loss" means a motor
vehicle which has sustained damages equivalent to
seventy-five percent or more of the market value as
determined by a nationally accepted used car value guide or
meets the definition of a flood-damaged vehicle as defined
in this section.

(b) The insurance company or insurer shall, prior to the
payment of the total loss claim, determine if the vehicle is
repairable, cosmetically damaged or nonrepairable. Within
ten days of payment of the total loss claim, the insurance
company or insurer shall surrender the certificate of title, a
copy of the claim settlement, a completed application on a
form prescribed by the commissioner and the registration
certificate if the owner has chosen to keep the vehicle to the
Division of Motor Vehicles.

(c) If the insurance company or insurer determines that
the vehicle is repairable, the division shall issue a "salvage
certificate", on a form prescribed by the commissioner, in
the name of the insurance company or the insurer or the
vehicle owner if the owner has chosen to retain the vehicle.
The certificate shall contain on the reverse thereof spaces for
one successive assignment before a new certificate at an
additional fee is required.

Upon the sale of the vehicle, the insurance company or
insurer or the vehicle owner if the owner has chosen to
retain the vehicle shall complete the assignment of
ownership on the salvage certificate and deliver it to the
purchaser. The vehicle shall not be titled or registered for
operation on the streets or highways of this state unless there
is compliance with subsection (g) of this section. The
division shall charge a fee of fifteen dollars for each salvage
title issued.

(d) If the insurance company or insurer determines the
damage to a totaled vehicle is exclusively cosmetic and no
repair is necessary in order to legally and safely operate the
motor vehicle on the roads and highways of this state, the
insurance company or insurer shall, upon payment of the
claim, submit the certificate of title to the division. Neither
the insurance company nor the division may require the
vehicle owner to surrender the registration certificate in the
event of a cosmetic total loss settlement.

(1) The division shall, without further inspection, issue
a title branded "cosmetic total loss" to the insured or
claimant owner if the insured or claimant owner wishes to
retain possession of the vehicle, in lieu of a "salvage
certificate". The division shall charge a fee of five dollars
for each "cosmetic total loss" title issued. The terms
"cosmetically damaged" and "cosmetic total loss" do not
include any vehicle which has been damaged by flood or
fire. The designation "cosmetic total loss" on a title may not
be removed.

(2) If the insured or claimant owner elects not to take
possession of the vehicle and the insurance company or
insurer retains possession, the division shall issue a cosmetic
total loss salvage certificate to the insurance company or
insurer. The division shall charge a fee of fifteen dollars for
each cosmetic total loss salvage certificate issued. The
division shall, upon surrender of the cosmetic total loss
72 salvage certificate issued under the provisions of this
73 paragraph and payment of the five percent privilege tax on
74 the fair market value of the vehicle as determined by the
75 commissioner, issue a title branded "cosmetic total loss"
76 without further inspection.

77 (e) If the insurance company or insurer determines that
78 the damage to a totaled vehicle renders it nonrepairable,
79 incapable of safe operation for use on roads and highways
80 and which has no resale value except as a source of parts or
81 scrap, the insurance company or vehicle owner shall, in the
82 manner prescribed by the commissioner, request that the
83 division issue a nonrepairable motor vehicle certificate in
84 lieu of a salvage certificate. The division shall issue a
85 nonrepairable motor vehicle certificate without charge.

86 (f) Any owner who scraps, compresses, dismantles or
87 destroys a vehicle for which a certificate of title,  
88 nonrepairable motor vehicle certificate or salvage certificate
89 has been issued shall, within twenty days, surrender the
90 certificate of title, nonrepairable motor vehicle certificate or
91 salvage certificate to the division for cancellation. Any
92 person who purchases or acquires a vehicle as salvage or
93 scrap, to be dismantled, compressed or destroyed, shall
94 within twenty days surrender the certificate to the division.

95 (g) If the motor vehicle is a "reconstructed vehicle" as
96 defined in this section or section one, article one of this
97 chapter, it may not be titled or registered for operation until
98 it has been inspected by an official state inspection station
99 and by the Division of Motor Vehicles. Following an
100 approved inspection, an application for a new certificate of
101 title may be submitted to the division; however, the
102 applicant shall be required to retain all receipts for
component parts, equipment and materials used in the
reconstruction. The salvage certificate shall also be
surrendered to the division before a certificate of title may
be issued with the appropriate brand.

(h) The owner or title holder of any motor vehicle titled
in this state which has previously been branded in this state
or another state as "salvage", "reconstructed", "cosmetic
total loss", "cosmetic total loss salvage", "flood" or "fire" or
an equivalent term under another state's laws shall, upon
becoming aware of the brand, apply for and receive a title
from the Division of Motor Vehicles on which the brand
"reconstructed", "salvage", "cosmetic total loss", "cosmetic
total loss salvage", "flood" or "fire" is shown. The division
shall charge a fee of five dollars for each title so issued.

(i) If application is made for title to a motor vehicle, the
title to which has previously been branded "reconstructed",
"salvage", "cosmetic total loss", "cosmetic total loss
salvage", "flood" or "fire" by the Division of Motor Vehicles
under this section and said application is accompanied by a
title from another state which does not carry the brand, the
division shall, before issuing the title, affix the brand
"reconstructed", "cosmetic total loss", "cosmetic total loss
salvage", "flood" or "fire" to the title. The privilege tax paid
on a motor vehicle titled as "reconstructed", "cosmetic total
loss", "flood" or "fire" under the provisions of this section
shall be based on fifty percent of the fair market value of the
vehicle as determined by a nationally accepted used car
value guide to be used by the commissioner.

(j) The division shall charge a fee of fifteen dollars for
the issuance of each salvage certificate or cosmetic total loss
salvage certificate but shall not require the payment of the
five percent privilege tax. However, upon application for a
certificate of title for a reconstructed, cosmetic total loss, flood- or fire-damaged vehicle, the division shall collect the
five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder licensed by the division is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of thirty-five dollars per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's office and may be expended by the division to carry out the provisions of this article: Provided, That on and after the first day of July, two thousand seven, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed twenty-five dollars for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(k) As used in this section:

(1) “Reconstructed vehicle” means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of subsection (m), section one, article one of this chapter.

(2) “Flood-damaged vehicle” means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.
Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood- or fire-damaged vehicle.

Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than one thousand dollars nor more than two thousand five hundred dollars, or imprisoned in jail for not more than one year, or both fined and imprisoned.

ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

*S17A-9-7. Surrender of evidence of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.

Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a

*Clerk’s Note: This section was also amended by S.B. 398 (Chapter 175), which passed prior to this act.
temporary registration plate or marker, the right to issue
temporary registration plates or markers, any nonresident or
other permit or any license certificate or dealer special plates
issued under the provisions of article six of this chapter is
canceled, suspended or revoked as authorized in this
chapter, the owner, holder or other person in possession of
the evidences of the registration, title, permit or license or
any special dealer plates shall, except as otherwise provided
in article six of this chapter, immediately return the
evidences of the registration, title, permit or license that was
canceled, suspended or revoked, together with any dealer
special plates relating to any license certificate, or any dealer
special plate or plates if only the dealer special plate is
suspended, to the division: Provided, That the owner or
holder shall, before reinstatement, pay a fee of ten dollars in
addition to all other fees, which shall be collected by the
division and credited to a special revolving fund in the State
Treasury to be appropriated to the division for use in
enforcement of the provisions of this code: Provided,
however, That on and after the first day of July, two
thousand seven, any balance in the special revolving fund
and all fees collected pursuant to this section shall be
deposited in the Motor Vehicle Fees Fund created in section
twenty-one, article two of this chapter.

(b) If any person willfully fails or refuses to return to the
division the evidences of the registration, title, permit or
license that have been canceled, suspended or revoked, or
any dealer special plates, when obligated so to do as
provided in this section, the commissioner shall immediately
notify the Superintendent of the State Police who shall, as
soon as possible, secure possession of the evidence of
registration, title, permit or license or any special dealer
plates and return it to the division. The Superintendent of
the State Police shall make a report in writing to the
commissioner, within two weeks after being notified by the
commissioner, as to the result of his or her efforts to secure
the possession and return of the evidences of registration, title, permit or license, or any dealer special plates.

(c) If any commercial motor carrier willfully fails or refuses to return to the division the evidences of the registration that have been suspended or revoked as provided in this section, the commissioner shall immediately notify the Public Service Commission which shall, as soon as possible, secure possession of the evidence of registration and return it to the division. The Public Service Commission shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of its efforts to secure the possession and return of the evidences of registration.

(d) For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any special dealer plates shall have willfully failed or refused, as provided in this section, to return to the division within ten days from the time that the cancellation, suspension or revocation becomes effective, and which has been certified to the Superintendent of the State Police as specified in this section, the owner or holder shall, before the registration, title, permit or license or any special dealer plates may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of fifteen dollars, which shall be collected by the Division of Motor Vehicles, paid into the State Treasury and credited to the General Fund to be appropriated to the State Police for application in the enforcement of the road laws.

A total of twenty-five dollars may be collected on each reinstatement for each vehicle to which any cancellation, suspension or revocation relates.
(e) When any motor vehicle registration is suspended for failure to maintain motor vehicle liability insurance the reinstatement fee is one hundred dollars, and if the vehicle owner fails to surrender the vehicle registration and the orders go to the State Police, an additional fee of fifty dollars shall be required before the motor vehicle registration may be reinstated. A total of one hundred fifty dollars may be collected on each reinstatement of any motor vehicle registration canceled, suspended or revoked for failure to maintain motor vehicle liability insurance.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-8. Vehicles exempt from payment of registration fees.

The following specified vehicles shall be exempt from the payment of any registration fees:

(1) Any vehicle owned or operated by the United States government, the State of West Virginia or any of their political subdivisions. The proper representative of the United States government, the State of West Virginia or any of their political subdivisions shall make an application for registration for the vehicle and the registration plate or plates issued for the vehicle shall be displayed as provided in this chapter;

(2) Any fire vehicle owned or operated by a volunteer fire department organized for the protection of community property;

(3) Any ambulance or any other emergency rescue vehicle owned or operated by a nonprofit, charitable organization and used exclusively for charitable purposes;

(4) Any vehicle owned by a disabled veteran as defined by the provisions of Public Law 663 of the 79th Congress of
public law 187 of the 82nd Congress of the United States, or Public Law 77 of the 90th Congress of the United States; except for vehicles used for hire which are owned by disabled veterans;

(5) Not more than one vehicle owned by a veteran with a hundred percent total and permanent service-connected disability as certified by the Director of the Department of Veterans' Affairs of West Virginia and not used for commercial purposes;

(6) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a former prisoner of war and not used for commercial purposes. For purposes of this subdivision, the term "prisoner of war" means any member of the armed forces of the United States, including the United States Coast Guard and National Guard, who was held by any hostile force with which the United States was actually engaged in armed conflict during any period of the incarceration; or any person, military or civilian, assigned to duty on the U. S. S. Pueblo who was captured by the military forces of North Korea on the twenty-third day of January, one thousand nine hundred sixty-eight, and thereafter held prisoner; except any person who, at any time, voluntarily, knowingly and without duress, gave aid to or collaborated with or in any manner served any such hostile force;

(7) Not more than one Class A or Class G vehicle, as defined in section one of this article, owned by a recipient of the Congressional Medal of Honor and not used for commercial purposes; and

(8) Vehicles registered in the name of community action agencies and used exclusively for a Head Start program.
§17B-2-7c. Motorcycle license examination fund.

On and after the first day of July, two thousand seven, any unexpended balance remaining in the Motorcycle License Examination Fund heretofore created shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code. The fund shall include all moneys received from fees collected for motorcycle instruction permits under this article and any other moneys specifically allocated to the fund.

If any person willfully fails or refuses to return to the division the evidences of the registration, title, permit or license that have been canceled, suspended or revoked, or any dealer special plates, when obligated so to do as provided in this section, the commissioner shall immediately notify the Superintendent of the State Police who shall, as soon as possible, secure possession of the evidences of registration, title, permit or license or any special dealer plates and return it to the division. The Superintendent of the State Police shall make a report in writing to the commissioner, within two weeks after being notified by the commissioner, as to the result of his or her efforts to secure the possession and return of the evidences of registration, title, permit or license, or any dealer special plates.
For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any special dealer plates shall have willfully failed or refused, as provided in this section, to return to the division within ten days from the time that the cancellation, suspension or revocation becomes effective, and which has been certified to the Superintendent of the State Police as specified in this section, the owner or holder shall, before the registration, title, permit or license or any special dealer plates may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of fifteen dollars, which shall be collected by the Division of Motor Vehicles, paid into the State Treasury and credited to the General Fund to be appropriated to the State Police for application in the enforcement of the road laws.

A total of twenty-five dollars may be collected on each reinstatement for each vehicle to which any cancellation, suspension or revocation relates: Provided, That when any motor vehicle registration is suspended for failure to maintain motor vehicle liability insurance the reinstatement fee is one hundred dollars and if the vehicle owner fails to surrender the vehicle registration and the orders go to the State Police, an additional fee of fifty dollars shall be required before the motor vehicle registration may be reinstated. A total of one hundred fifty dollars may be collected on each reinstatement of any motor vehicle registration canceled, suspended or revoked for failure to maintain motor vehicle liability insurance.
§17C-5A-2a. Assessment of costs; special account created.

The Division of Motor Vehicles is hereby authorized and required to assess witness costs at the same rate as witness fees in circuit court and a docket fee of ten dollars for each hearing request against any person filing a request for a hearing under section two of this article who fails to appear, fails to have said order rescinded or fails to have said order modified to a lesser period of revocation.

All fees and costs collected hereunder shall be paid into a special revenue account in the State Treasury: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the special revolving fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees and costs collected shall be deposited in that fund. A portion of the funds in the Motor Vehicle Fees Fund may
be used to pay or reimburse the various law-enforcement agencies at the same rate as witnesses in circuit court for the travel and appearance of its officers before the commissioner or authorized deputy or agent pursuant to a hearing request under the provisions of this article. The department shall authorize payment to the law-enforcement agencies from said account as the fees for a particular hearing request are received from the person against whom the costs were assessed. The department shall authorize transfer to an appropriate agency account from the Motor Vehicle Fees Fund to pay costs of registered and certified mailings and other expenses associated with the conduct of hearings under this article as the docket fee for a particular hearing request is received from the person against whom the costs were assessed.

In the event judicial review results in said order being rescinded or modified to a lesser period of revocation the costs assessed shall be discharged.

§17C-5A-3. Safety and treatment program; reissuance of license.

(a) The Division of Motor Vehicles, in cooperation with the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code establishing a comprehensive safety and treatment program for persons whose licenses have been revoked under the provisions of this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code and shall likewise
establish the minimum qualifications for mental health facilities or other public agencies or private entities conducting the safety and treatment program: Provided, That the commissioner may establish standards whereby the division will accept or approve participation by violators in another treatment program which provides the same or substantially similar benefits as the safety and treatment program established pursuant to this section. The program shall include, but not be limited to, treatment of alcoholism, alcohol and drug abuse, psychological counseling, educational courses on the dangers of alcohol and drugs as they relate to driving, defensive driving or other safety driving instruction and other programs designed to properly educate, train and rehabilitate the offender.

(b)(1) The Division of Motor Vehicles, in cooperation with the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational and treatment program for each person whose license has been revoked under the provisions of this article or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code, which shall contain the following: (A) A listing and evaluation of the offender's prior traffic record; (B) characteristics and history of alcohol or drug use, if any; (C) his or her amenability to rehabilitation through the alcohol safety program; and (D) a recommendation as to treatment or rehabilitation, and the terms and conditions of the treatment or rehabilitation. The program shall be prepared by persons knowledgeable in the diagnosis of alcohol or drug abuse and treatment. The cost of the program shall be paid out of fees established by the
Commissioner of Motor Vehicles in cooperation with the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse. The program provider shall collect the established fee from each participant upon enrollment. The program provider shall also at the time of enrollment remit to the commissioner a portion of the collected fee established by the commissioner in cooperation with the Department of Health and Human Resources, which shall be deposited into an account designated the Driver’s Rehabilitation Fund: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the driver’s rehabilitation fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(2) The commissioner, after giving due consideration to the program developed for the offender, shall prescribe the necessary terms and conditions for the reissuance of the license to operate a motor vehicle in this state revoked under this article, or section seven, article five of this chapter, or subsection (6), section five, article three, chapter seventeen-b of this code which shall include successful completion of the educational, treatment or rehabilitation program, subject to the following:

(A) When the period of revocation is six months, the license to operate a motor vehicle in this state shall not be reissued until: (i) At least ninety days have elapsed from the date of the initial revocation, during which time the revocation was actually in effect; (ii) the offender has successfully completed the program; (iii) all costs of the
program and administration have been paid; and (iv) all
costs assessed as a result of a revocation hearing have been
paid.

(B) When the period of revocation is for a period of
years, the license to operate a motor vehicle in this state
shall not be reissued until: (i) At least one half of such time
period has elapsed from the date of the initial revocation,
during which time the revocation was actually in effect; (ii)
the offender has successfully completed the program; (iii)
all costs of the program and administration have been paid;
and (iv) all costs assessed as a result of a revocation
hearing have been paid.

(C) When the period of revocation is for life, the
license to operate a motor vehicle in this state shall not be
reissued until: (i) At least ten years have elapsed from the
date of the initial revocation, during which time the
revocation was actually in effect; (ii) the offender has
successfully completed the program; (iii) all costs of the
program and administration have been paid; and (iv) all
costs assessed as a result of a revocation hearing have been
paid.

(D) Notwithstanding any provision of this code or any
rule, any mental health facilities or other public agencies or
private entities conducting the safety and treatment
program when certifying that a person has successfully
completed a safety and treatment program shall only have
to certify that such person has successfully completed the
program.
(c)(1) The Division of Motor Vehicles, in cooperation with the Department of Health and Human Resources, Division of Alcoholism and Drug Abuse, shall provide for the preparation of an educational program for each person whose license has been suspended for sixty days pursuant to the provisions of subsection (l), section two, article five-a of this chapter. The educational program shall consist of not less than twelve nor more than eighteen hours of actual classroom time.

(2) When a sixty-day period of suspension has been ordered, the license to operate a motor vehicle shall not be reinstated until: (A) At least sixty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect; (B) the offender has successfully completed the educational program; (C) all costs of the program and administration have been paid; and (D) all costs assessed as a result of a suspension hearing have been paid.

(d) A required component of the rehabilitation program provided for in subsection (b) of this section and the education program provided for in subsection (c) of this section shall be participation by the violator with a victim impact panel program providing a forum for victims of alcohol- and drug-related offenses and offenders to share first-hand experiences on the impact of alcohol- and drug-related offenses in their lives. The commissioner shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to implement victim impact panels where appropriate numbers of victims are available and willing to participate and shall establish guidelines for other innovative programs which
may be substituted where such victims are not available so as to assist persons whose licenses have been suspended or revoked for alcohol- and drug-related offenses to gain a full understanding of the severity of their offenses in terms of the impact of such offenses on victims and offenders. The legislative rules proposed for promulgation by the commissioner shall require, at a minimum, discussion and consideration of the following:

(A) Economic losses suffered by victims or offenders;

(B) Death or physical injuries suffered by victims or offenders;

(C) Psychological injuries suffered by victims or offenders;

(D) Changes in the personal welfare or familial relationships of victims or offenders; and

(E) Other information relating to the impact of alcohol-and drug-related offenses upon victims or offenders.

Any rules promulgated pursuant to this subsection shall contain provisions which ensure that any meetings between victims and offenders shall be nonconfrontational and ensure the physical safety of the persons involved.

§17C-5A-3a. Establishment of and participation in the Motor Vehicle Alcohol Test and Lock Program.

(a) The Division of Motor Vehicles shall control and regulate a Motor Vehicle Alcohol Test and Lock Program
for persons whose licenses have been revoked pursuant to this article or the provisions of article five of this chapter or have been convicted under section two, article five of this chapter. The program shall include the establishment of a users fee for persons participating in the program which shall be paid in advance and deposited into the Driver’s Rehabilitation Fund: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the Driver’s Rehabilitation Fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund. Except where specified otherwise, the use of the term "program" in this section refers to the Motor Vehicle Alcohol Test and Lock Program. The Commissioner of the Division of Motor Vehicles shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code for the purpose of implementing the provisions of this section. The rules shall also prescribe those requirements which, in addition to the requirements specified by this section for eligibility to participate in the program, the commissioner determines must be met to obtain the commissioner’s approval to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system. For purposes of this section, a "motor vehicle alcohol test and lock system" means a mechanical or computerized system which, in the opinion of the commissioner, prevents the operation of a motor vehicle when, through the system’s assessment of the blood alcohol content of the person operating or attempting to operate the vehicle, the person is determined to be under the influence of alcohol.
(b)(1) Any person whose license is revoked for the first time pursuant to this article or the provisions of article five of this chapter is eligible to participate in the program when the person’s minimum revocation period as specified by subsection (c) of this section has expired and the person is enrolled in or has successfully completed the safety and treatment program or presents proof to the commissioner within sixty days of receiving approval to participate by the commissioner that he or she is enrolled in a safety and treatment program.

(2) Any person whose license has been suspended pursuant to the provisions of subsection (l), section two of this article for driving a motor vehicle while under the age of twenty-one years with an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect:
Provided, That in the case of a person under the age of eighteen, the person is eligible to participate in the program after thirty days have elapsed from the date of the initial suspension, during which time the suspension was actually in effect or after the person’s eighteenth birthday, whichever is later. Before the commissioner approves a person to operate a motor vehicle equipped with a motor vehicle alcohol test and lock system, the person must agree to comply with the following conditions:

(A) If not already enrolled, the person will enroll in and complete the educational program provided for in subsection (c), section three of this article at the earliest
time that placement in the educational program is available, unless good cause is demonstrated to the commissioner as to why placement should be postponed;

(B) The person will pay all costs of the educational program, any administrative costs and all costs assessed for any suspension hearing.

(3) Notwithstanding the provisions of this section to the contrary, no person eligible to participate in the program under this subsection may operate a motor vehicle unless approved to do so by the commissioner.

(c) A person who participates in the program under subdivision (1), subsection (b) of this section is subject to a minimum revocation period and minimum period for the use of the ignition interlock device as follows:

(1) For a person whose license has been revoked for a first offense for six months pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (d) or (f), section two, article five of this chapter or pursuant to subsection (i), section two of this article, the minimum period of revocation for participation in the test and lock program is thirty days and the minimum period for the use of the ignition interlock device is five months;

(2) For a person whose license has been revoked for a first offense pursuant to section seven, article five of this chapter, refusal to submit to a designated secondary chemical test, the minimum period of revocation for participation in the test and lock program is thirty days and
the minimum period for the use of the ignition interlock device is nine months;

(3) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (a), section two, article five of this chapter or pursuant to subsection (f), section two of this article, the minimum period of revocation before the person is eligible for participation in the test and lock program is twelve months and the minimum period for the use of the ignition interlock device is two years;

(4) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (b), section two, article five of this chapter or pursuant to subsection (g), section two of this article, the minimum period of revocation is six months and the minimum period for the use of the ignition interlock device is two years;

(5) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (c), section two, article five of this chapter or pursuant to subsection (h), section two of this article, the minimum period of revocation for participation in the program is two months and the minimum period for the use of the ignition interlock device is one year;

(6) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of
this article for conviction of an offense defined in
subsection (i), section two, article five of this chapter or
pursuant to subsection (m), section two of this article, the
minimum period of revocation for participation in the
program is two months and the minimum period for the use
of the ignition interlock device is ten months;

(d) Notwithstanding any provision of the code to the
contrary, a person shall participate in the program if the
person is convicted under section two, article five of this
chapter or the person’s license is revoked under section two
of this article or section seven, article five of this chapter
and the person was previously either convicted or license
was revoked under any provision cited in this subsection
within the past ten years. The minimum revocation period
for a person required to participate in the program under
this subsection is one year and the minimum period for the
use of the ignition interlock device is two years, except that
the minimum revocation period for a person required to
participate because of a violation of subsection (l), section
two of this article or subsection (h), section two, article five
of this chapter is two months and the minimum period of
participation is one year. The division will add one year to
the minimum period for the use of the ignition interlock
device for each additional previous conviction or
revocation within the past ten years. Any person required
to participate under this subsection must have an ignition
interlock device installed on every vehicle he or she owns
or operates.

(e) An applicant for the test and lock program may not
have been convicted of any violation of section three,
article four, chapter seventeen-b of this code for driving
while the applicant’s driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program; such is necessary for employment purposes.

(f) Upon permitting an eligible person to participate in the program, the commissioner shall issue to the person, and the person is required to exhibit on demand, a driver’s license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(g) The commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the division or program service provider.

(h) A person whose license has been suspended pursuant to the provisions of subsection (l), section two of this article who has completed the educational program and who has not violated the terms required by the commissioner of the person’s participation in the program is entitled to the reinstatement of his or her driver’s license six months from the date the person is permitted to operate a motor vehicle by the commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all
other records pertaining to the suspension shall be expunged by operation of law: *Provided*, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the commissioner shall reply that no information is available. Information from the file may be used by the commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.

(i) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during such person’s participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars: *Provided*, That notwithstanding any provision of this code to the contrary, a person enrolled and
participating in the test and lock program may operate a motor vehicle solely at his or her job site, if such is a condition of his or her employment. For the purpose of this section, job site does not include any street or highway open to the use of the public for purposes of vehicular traffic.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-23. Funding for the commercial driver's license fees.

(a) Each application for a commercial driver's license shall be accompanied by the fees provided in this section and the fees shall be deposited in a special revolving fund for the operation by the division of its functions established by this chapter: Provided, That on and after the first day of July, two thousand seven, any unexpended balance remaining in the special revolving fund shall be transferred to the Motor Vehicle Fees Fund created under the provisions of section twenty-one, article two, chapter seventeen-a of this code and all further fees collected shall be deposited in that fund.

(b) The fee for a commercial driver's license shall be established by the commissioner to cover all necessary costs for program administration. The fees for knowledge and road testing shall also be established by the commissioner to cover all program costs projected to be incurred by the division.
ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-12. Motorboat identification numbers required; application for numbers; fee; displaying; reciprocity; change of ownership; conformity with United States regulations; records; renewal of certificate; transfer of interest, abandonment, etc.; change of address; unauthorized numbers; information to be furnished assessors.

Every motorboat, as defined in this section, operating upon public waters within the territorial limits of this state shall be numbered as provided in this section:

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the commissioner on forms approved by the Division of Motor Vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of fifteen dollars for a three-year registration period if the motorboat is propelled by a motor of three or more horsepower: Provided, That beginning on the first day of April, two thousand, the fee for a three-year registration period is as follows:

(1) Class A, motorboats less than sixteen feet in length, thirty dollars;

(2) Class 1, motorboats sixteen feet or over and less than twenty-six feet in length, forty-five dollars;
(3) Class 2, motorboats twenty-six feet or over and less than forty feet in length, sixty dollars; and

(4) Class 3, forty feet in length or over, seventy-five dollars.

The fee may be prorated by the commissioner for periods of less than three years. There is no fee for motorboats propelled by motors of less than three horsepower. All fees, including those received under subdivision (b) of this section, shall be deposited in the State Treasury. On and after the first day of July, two thousand seven, all moneys deposited pursuant to this section and credited to the Division of Motor Vehicles and fifty percent of all fees collected thereafter shall be credited to the State Road Fund. The remaining fifty percent shall be credited to the Division of Natural Resources and shall be used and paid out upon order of the director solely for the enforcement and safety education of the state boating system. Upon receipt of the application in approved form, the commissioner shall enter the application upon the records of the division and issue to the applicant a number awarded to the motorboat and the name and address of the owner. The owner shall paint on or attach to each side of the bow of the motorboat the identification number in the manner prescribed by rules of the commissioner in order that it is clearly visible. The owner shall maintain the number in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the motorboat for which it is issued, whenever the motorboat is in operation.

(b) In order to permit a motorboat sold to a purchaser by a dealer to be operated pending receipt of the certificate of number from the commissioner, the commissioner may deliver temporary certificates of number to in turn be issued
to purchasers of motorboats to dealers, upon application by
the dealer and payment of one dollar for each temporary
certificate. Every person who is issued a temporary
certificate by a dealer shall, under the provisions of
subdivision (a) of this section, apply for a certificate of
number no later than ten days from the date of issuance of
the temporary certificate. A temporary certificate expires
upon receipt of the certificate, upon rescission of the contract
to purchase the motorboat in question or upon the expiration
of forty days from the date of issuance, whichever occurs
first. It is unlawful for any dealer to issue any temporary
certificate knowingly containing any misstatement of fact or
knowingly to insert any false information on the face of the
temporary certificate. The commissioner may by rule
prescribe additional requirements upon the dealers and
purchasers that are consistent with the effective
administration of this section.

(c) The owner of any motorboat already covered by a
number in full force and effect which has been awarded to
it pursuant to then operative federal law or a federally
approved numbering system of another state shall record the
number prior to operating the motorboat on the waters of
this state in excess of the sixty-day reciprocity period
provided for in section fourteen of this article. The
recordation shall be in the manner and pursuant to procedure
required for the award of a number under subdivision (a) of
this section, except that the commissioner shall not issue an
additional or substitute number.

(d) If the ownership of a motorboat changes, the new
owner shall file a new application form with the required fee
with the commissioner who shall award a new certificate of
number in the same manner as provided for in an original
award of number.
(e) In the event that an agency of the United States government has in force an overall system of identification numbering for motorboats within the United States, the numbering system employed pursuant to this article by the Division of Motor Vehicles shall be in conformity with the federal system.

(f) The license is valid for a maximum period of three years. If at the expiration of that period ownership has remained unchanged, the commissioner shall, upon application and payment of the proper fee, grant the owner a renewal of the certificate of number for an additional three-year period.

(g) The owner shall furnish the commissioner notice of the transfer of all or any part of an interest, other than the creation of a security interest, in a motorboat numbered in this state pursuant to subdivisions (a) and (b) of this section or of the destruction or abandonment of the motorboat within fifteen days of the transfer of interest, destruction or abandonment. The transfer, destruction or abandonment shall terminate the certificate of number for the motorboat, except that in the case of a transfer of a part interest which does not affect the owner's right to operate the motorboat, the transfer shall not terminate the certificate of number.

(h) Any holder of a certificate of number shall notify the commissioner within fifteen days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the commissioner with his or her new address. The commissioner may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the
alteration of an outstanding certificate to show the new address of the holder.

(i) An owner shall not paint, attach or otherwise display a number other than the number awarded to a motorboat or granted reciprocity pursuant to this article on either side of the bow of the motorboat.

(j) The commissioner shall on or before the thirtieth day of August of each year forward to the assessor of each county a list of the names and addresses of all persons, firms and corporations owning vessels and operating the vessels or other boats registered with the commissioner under the provisions of this article. In furnishing this information to each county assessor, the commissioner shall include information on the make and model of the vessels and other equipment required to be registered for use by the owner or operator of the boats under the provisions of this article: Provided, That the commissioner is not required to furnish the information to the assessor if the cost price of the vessel does not exceed five hundred dollars or the cost of the motor does not exceed two hundred fifty dollars.

(k) No person may operate an unlicensed motorboat upon any waters of this state without first acquiring the certificate of number or license as required by law.
AN ACT to amend and reenact §17A-3-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17A-9-5 and §17A-9-7 of said code, all relating to the authority of the Division of Motor Vehicles to refuse to register and to suspend or revoke motor vehicle registrations of motor carriers whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration.

Be it enacted by the Legislature of West Virginia:

That §17A-3-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17A-9-5 and §17A-9-7 of said code be amended and reenacted, all to read as follows:

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

§17A-3-7. Grounds for refusing registration or certificate of title.
The division shall refuse registration or issuance of a certificate of title or any transfer of registration upon any of the following grounds:

1. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the division or that the applicant is not entitled to the issuance of a certificate of title or registration of the vehicle under this chapter;

2. That the applicant fails to present a statement of insurance or proof of other security as required pursuant to the provisions of section three of this article;

3. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

4. That the division has reasonable grounds to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration or the issuance of certificate of title would constitute a fraud against the rightful owner or other person having a valid lien upon such vehicle;

5. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state;

6. That the required fee has not been paid; or

7. That the vehicle is operated by a commercial motor carrier who has failed to provide a federal motor carrier
ARTICLE 9. OFFENSES AGAINST REGISTRATION LAWS AND SUSPENSION OR REVOCATION OF REGISTRATION.

§17A-9-5. Authority of division to suspend or revoke registration, certificate, etc.

The division is hereby authorized to suspend or revoke the registration of a vehicle or a certificate of title, registration card or registration plate or any nonresident or other permit in any of the following events:

(1) When the division is satisfied that such registration or that such certificate, card, plate or permit was fraudulently or erroneously issued;

(2) When the division determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways;

(3) When a registered vehicle has been dismantled or wrecked;

(4) When a registration card, registration plate or permit is knowingly displayed upon a vehicle other than the one for which issued;
When the division determines that the owner has committed any offense under this article involving the registration or the certificate, card, plate or permit to be suspended or revoked;

(6) When the vehicle is operated by a commercial motor carrier whose authority to operate in interstate commerce has been denied or suspended by the federal Motor Carrier Safety Administration; or

(7) When the division is so authorized under any other provision of law.

*§17A-9-7. Surrender of evidences of registration, etc., upon cancellation, suspension or revocation; willful failure or refusal to surrender; fee for reinstatement.

(a) Whenever the registration of a vehicle, a certificate of title, a registration card, registration plate or plates, a temporary registration plate or marker, the right to issue temporary registration plates or markers, any nonresident or other permit or any license certificate or dealer special plates issued under the provisions of article six of this chapter is canceled, suspended or revoked as authorized in this chapter, the owner, holder or other person in possession of the evidences of the registration, title, permit or license or any special dealer plates shall, except as otherwise provided in article six of this chapter, immediately return the evidences of the registration, title, permit or license that was canceled, suspended or revoked,

*CLERK'S NOTE: This section was also amended by S.B. 523 (Chapter 174), which passed subsequent to this act.
together with any dealer special plates relating to any license
certificate, or any dealer special plate or plates if only the
dealer special plate is suspended, to the division: Provided,
That the owner or holder shall, before reinstatement, pay a fee
of ten dollars in addition to all other fees, which shall be
collected by the division and credited to a special revolving
fund in the State Treasury to be appropriated to the division for
use in enforcement of the provisions of this code.

(b) If any person willfully fails or refuses to return to the
division the evidences of the registration, title, permit or
license that have been canceled, suspended or revoked, or any
dealer special plates, when obligated so to do as provided in
this section, the commissioner shall immediately notify the
Superintendent of the State Police who shall, as soon as
possible, secure possession of the evidence of registration, title,
permit or license or any special dealer plates and return it to the
division. The Superintendent of the State Police shall make a
report in writing to the commissioner, within two weeks after
being notified by the commissioner, as to the result of his or
her efforts to secure the possession and return of the evidences
of registration, title, permit or license, or any dealer special
plates.

(c) If any commercial motor carrier willfully fails or
refuses to return to the division the evidences of the
registration that have been suspended or revoked as provided
in this section, the commissioner shall immediately notify the
Public Service Commission which shall, as soon as possible,
secure possession of the evidence of registration and return it
to the division. The Public Service Commission shall make a
report in writing to the commissioner, within two weeks after
being notified by the commissioner, as to the result of its
efforts to secure the possession and return of the evidences of registration.

(d) For each registration, certificate of title, registration card, registration plate or plates, temporary registration plate or marker, permit, license certificate or dealer special plate, which the owner, holder or other person in possession of the registration, title, permit or license or any special dealer plates shall have willfully failed or refused, as provided in this section, to return to the division within ten days from the time that the cancellation, suspension or revocation becomes effective, and which has been certified to the Superintendent of the State Police as specified in this section, the owner or holder shall, before the registration, title, permit or license or any special dealer plates may be reinstated, if reinstatement is permitted, in addition to all other fees and charges, pay a fee of fifteen dollars, which shall be collected by the Division of Motor Vehicles, paid into the State Treasury and credited to the General Fund to be appropriated to the State Police for application in the enforcement of the road laws.

A total of twenty-five dollars may be collected on each reinstatement for each vehicle to which any cancellation, suspension or revocation relates.

(e) When any motor vehicle registration is suspended for failure to maintain motor vehicle liability insurance the reinstatement fee is one hundred dollars, and if the vehicle owner fails to surrender the vehicle registration and the orders go to the State Police, an additional fee of fifty dollars shall be required before the motor vehicle registration may be reinstated. A total of one hundred fifty dollars may be collected on each reinstatement of any motor vehicle registration canceled, suspended or revoked for failure to maintain motor vehicle liability insurance.
AN ACT to amend and reenact §17A-4-10 of the Code of West Virginia, 1931, as amended, relating to salvage certificates for certain wrecked vehicles; allowing vehicle owners to retain certain vehicles declared totaled; requiring the surrender of title and registration certificate; eliminating the special revenue account; increasing criminal penalties; and clarifying certain definitions.

Be it enacted by the Legislature of West Virginia:

That §17A-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

*§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

1 (a) In the event a motor vehicle is determined to be a total loss or otherwise designated as "totaled" by any insurance company or insurer, and upon payment of a total loss claim to any insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: Provided, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been
determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term "total loss" means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmetically damaged or nonrepairable. Within ten days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner and the registration certificate if the owner has chosen to keep the vehicle to the Department of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a "salvage certificate", on a form prescribed by the commissioner, in the name of the insurance company or the insurer or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain on the reverse thereof spaces for one successive assignment before a new certificate at an additional fee is required.

Upon the sale of the vehicle, the insurance company or insurer or the vehicle owner if the owner has chosen to retain the vehicle shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle shall not be titled or registered for operation on the streets or highways of this state unless there is compliance with subsection (g) of this section. The division shall charge a fee of fifteen dollars for each salvage title issued.

(d) If the insurance company or insurer determines the damage to a totaled vehicle is exclusively cosmetic and no repair is necessary in order to legally and safely operate the
motor vehicle on the roads and highways of this state, the insurance company or insurer shall upon payment of the claim submit the certificate of title to the division. Neither the insurance company nor the division may require the vehicle owner to surrender the registration certificate in the event of a cosmetic total loss settlement.

(1) The division shall, without further inspection, issue a title branded "cosmetic total loss" to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a "salvage certificate". The division shall charge a fee of five dollars for each "cosmetic total loss" title issued. The terms "cosmetically damaged" and "cosmetic total loss" do not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a title may not be removed.

(2) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of fifteen dollars for each cosmetic total loss salvage certificate issued. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment of the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded "cosmetic total loss" without further inspection.

(e) If the insurance company or insurer determines that the damage to a totaled vehicle renders it nonrepairable, incapable of safe operation for use on roads and highways and which has no resale value except as a source of parts or scrap, the insurance company or vehicle owner shall, in the manner prescribed by the commissioner, request that the division issue a nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a nonrepairable motor vehicle certificate without charge.
(f) Any owner who scraps, compresses, dismantles or destroys a vehicle for which a certificate of title, nonrepairable motor vehicle certificate or salvage certificate has been issued shall, within twenty days, surrender the certificate of title, nonrepairable motor vehicle certificate or salvage certificate to the division for cancellation. Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall within twenty days surrender the certificate to the division.

(g) If the motor vehicle is a "reconstructed vehicle" as defined in this section or section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division; however, the applicant shall be required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(h) The owner or title holder of any motor vehicle titled in this state which has previously been branded in this state or another state as "salvage", "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood" or "fire" or an equivalent term under another state's laws shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood" or "fire" is shown. The division shall charge a fee of five dollars for each title so issued.

(i) If application is made for title to a motor vehicle, the title to which has previously been branded "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood" or "fire" by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood" or "fire" by the Division of Motor Vehicles.
salvage", "flood" or "fire" to the title. The privilege tax paid on a motor vehicle titled as "reconstructed", "cosmetic total loss", "flood" or "fire" under the provisions of this section shall be based on fifty percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(j) The division shall charge a fee of fifteen dollars for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder licensed by the division is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of thirty-five dollars per vehicle for inspections of reconstructed vehicles. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed twenty-five dollars for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(k) As used in this section:

(1) “Reconstructed vehicle” means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of subsection (m), section one, article one of this chapter.

(2) “Flood-damaged vehicle” means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.
(l) Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

(m) A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood- or fire-damaged vehicle.

(n) Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned in jail for not more than one year, or both fined and imprisoned.

CHAPTER 177

(Com. Sub. for S.B. 601 - By Senators Jenkins, Plymale, Kessler, Chafin, Unger, Oliverio, Bailey, Minard, Green, Caruth, Stollings, Deem, Bowman, Hall, Love, Yoder, Barnes, Helmick, Fanning, Foster, Hunter, Prezioso, Edgell, McKenzie, Guills and White)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §17A-6A-3, §17-6A-10 and §17A-6A-12 of the Code of West Virginia, 1931, as amended, all relating to the establishment or relocation of additional motor vehicle dealers within a relevant market area; redefining "relevant market area"; creating exceptions for certain relocations and transfers; exceptions for purposes of adding
Be it enacted by the Legislature of West Virginia:

That §17A-6A-3, §17A-6A-10 and §17A-6A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.**


For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

1. “Dealer agreement” means the franchise, agreement or contract in writing between a manufacturer, distributor and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the purchase, lease or sale of new motor vehicles, accessories, service and sale of parts for motor vehicles.

2. “Designated family member” means the spouse, child, grandchild, parent, brother or sister of a deceased new motor vehicle dealer who is entitled to inherit the deceased dealer’s ownership interest in the new motor vehicle dealership under the terms of the dealer’s will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate
succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer’s property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if such a document is filed.

(3) “Distributor” means any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident or nonresident, or who controls any person, resident or nonresident, who, in whole or in part, offers for sale, sells or distributes any new motor vehicle to a new motor vehicle dealer.

(4) “Established place of business” means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) “Factory branch” means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained
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by a manufacturer or distributor which is engaged in
promoting the sale of a particular make of new motor
vehicles in this state to new motor vehicle dealers.

(6) “Factory representative” means an agent or employee
of a manufacturer, distributor or factory branch retained or
employed for the purpose of making or promoting the sale
of new motor vehicles or for supervising or contracting with
new motor vehicle dealers or proposed motor vehicle
dealers.

(7) “Good faith” means honesty in fact and the
observation of reasonable commercial standards of fair
dealing in the trade.

(8) “Manufacturer” means any person who manufactures
or assembles new motor vehicles; or any distributor, factory
branch or factory representative.

(9) “Motor vehicle” means that term as defined in
section one, article one of this chapter, including motorcycle
and recreational vehicle as defined in subsections (c) and
(nn), respectively, of said section, but not including a tractor
or farm equipment.

(10) “New motor vehicle” means a motor vehicle which
is in the possession of the manufacturer, distributor or
wholesaler, or has been sold only to a new motor vehicle
dealer and on which the original title has not been issued
from the new motor vehicle dealer.

(11) “New motor vehicle dealer” means a person who
holds a dealer agreement granted by a manufacturer or
distributor for the sale of its motor vehicles, who is engaged
in the business of purchasing, selling, leasing, exchanging or
dealing in new motor vehicles, service of said vehicles,
warranty work and sale of parts who has an established
place of business in this state and is licensed by the Division
of Motor Vehicles.

(12) “Person” means a natural person, partnership,
corporation, association, trust, estate or other legal entity.

(13) “Proposed new motor vehicle dealer” means a
person who has an application pending for a new dealer
agreement with a manufacturer or distributor. “Proposed
motor vehicle dealer” does not include a person whose
dealer agreement is being renewed or continued.

(14) “Relevant market area” means the area located
within a twenty air-mile radius around an existing same line-
make new motor vehicle dealership: Provided, That a fifteen
mile relevant market area as it existed prior to the effective
date of this statute shall apply to any proposed new motor
vehicle dealership as to which a manufacturer or distributor
and the proposed new motor vehicle dealer have executed
on or before the effective date of this statute a written
agreement, including a letter of intent, performance
agreement or commitment letter, concerning the
establishment of the proposed new motor vehicle dealership.


(1) A manufacturer or distributor may not require any
new motor vehicle dealer in this state to do any of the
following:

(a) Order or accept delivery of any new motor vehicle,
part or accessory of the vehicle, equipment or any other
commodity not required by law which was not voluntarily
ordered by the new motor vehicle dealer. This section does
not prevent the manufacturer or distributor from requiring
(b) Order or accept delivery of any new motor vehicle with special features, accessories or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(c) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays or other materials at the expense of the new motor vehicle dealer;

(d) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

(e) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(f) Refrain from participation in the management of, investment in or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of
(g) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable; and

(h) Prospectively assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer.

(2) A manufacturer or distributor may not do any of the following:

(a) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is
caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. No manufacturer or distributor may penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

(b) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer’s market, to make the allocations;

(c) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone or region, whichever geographical area is the smallest;

(d) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price
increase or price decrease. This subdivision does not apply to price changes caused by the following:

(i) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(ii) In the case of foreign made vehicles or components, revaluation of the United States dollar; or

(iii) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

(e) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

(f) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

(g) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

(h) Establish a new motor vehicle dealership which would unfairly compete with a new motor vehicle dealer of the same line-make operating under a dealer agreement with the manufacturer or distributor in the relevant market area.
A manufacturer or distributor shall not be considered to be unfairly competing if the manufacturer or distributor is:

(i) Operating a dealership temporarily for a reasonable period.

(ii) Operating a dealership which is for sale at a reasonable price.

(iii) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

(i) A manufacturer may not, except as provided by this section, directly or indirectly:

(i) Own an interest in a dealer or dealership;

(ii) Operate a dealership; or

(iii) Act in the capacity of a new motor vehicle dealer: Provided, That a manufacturer may own an interest, other than stock in a publicly held company, solely for investment purposes;

(j) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed twelve months from the date the manufacturer or distributor acquires the dealership if:

(i) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and
(ii) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

(k) The twelve-month period may be extended for an additional twelve months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within twenty air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original twelve-month period. Any dealer receiving the notice may protest the proposed extension within thirty days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

(l) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer’s or distributor’s participation in the dealership is in a bona fide relationship with a franchised dealer who:

(i) Has made a significant investment in the dealership, subject to loss;

(ii) Has an ownership interest in the dealership; and
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(iii) Operates the dealership under a plan to acquire full
ownership of the dealership within a reasonable time and
under reasonable terms and conditions;

(m) Unreasonably withhold consent to the sale, transfer
or exchange of the dealership to a qualified buyer capable of
being licensed as a new motor vehicle dealer in this state;

(n) Fail to respond in writing to a request for consent to
a sale, transfer or exchange of a dealership within sixty days
after receipt of a written application from the new motor
vehicle dealer on the forms generally utilized by the
manufacturer or distributor for such purpose and containing
the information required therein. Failure to respond to the
request within the sixty days is consent;

(o) Unfairly prevent a new motor vehicle dealer from
receiving reasonable compensation for the value of the new
motor vehicle dealership;

(p) Audit any motor vehicle dealer in this state for
warranty parts or warranty service compensation, service
compensation, service incentives, rebates or other forms of
sales incentive compensation more than twelve months after
the claim for payment or reimbursement has been made by
the automobile dealer: Provided, That the provisions of this
subsection do not apply where a claim is fraudulent. In
addition, the manufacturer or distributor is responsible for
reimbursing the audited dealer for all copying, postage and
administrative costs incurred by the dealer during the audit.
Any charges to a dealer as a result of the audit must be
separately billed to the dealer;

(q) Unreasonably restrict a dealer’s ownership of a
dealership through noncompetition covenants, site control,
sublease, collateral pledge of lease, right of first refusal,
A right of first refusal is created when:

(i) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer’s assets where the dealer owner receives consideration, terms and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than fifty percent of the dealer’s ownership.

(ii) The proposed change of the dealership’s ownership or the transfer of the new vehicle dealer’s assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer’s owners to one of the following:

(A) A designated family member of one or more of the dealer owners;

(B) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

(C) A partnership or corporation controlled by a designated family member of one of the dealers;

(D) A trust established or to be established:

(i) For the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer’s or distributor’s standards; or

(ii) To provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.
(iii) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute that the manufacturer evaluate, process or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party.

(iv) Except as otherwise provided in this subsection, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer’s or distributor’s exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within twenty days of the dealer’s receipt of the manufacturer’s or distributor’s written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

(r) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

(s) Make any material change in any franchise agreement without giving the new motor vehicle dealer written notice by certified mail of the change at least sixty days prior to the effective date of the change;

(t) Fail to reimburse a new motor vehicle dealer, at the dealer’s regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;
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281 (u) Compel a new motor vehicle dealer through its
282 finance subsidiaries to agree to unreasonable operating
283 requirements or to directly or indirectly terminate a franchise
284 through the actions of a finance subsidiary of the franchisor.
285 This subsection does not limit the right of a finance
286 subsidiary to engage in business practices in accordance
287 with the usage of trade in retail or wholesale vehicle
288 financing;
289
290 (v) Discriminate directly or indirectly between dealers
291 on vehicles of like grade or quantity where the effect of the
292 discrimination would substantially lessen competition; and
293
294 (w) Use or employ any performance standard that is not
295 fair and reasonable and based upon accurate and verifiable
296 data made available to the dealer.
297
298 (3) A manufacturer or distributor, either directly or
299 through any subsidiary, may not terminate, cancel, fail to
300 renew or discontinue any lease of the new motor vehicle
301 dealer's established place of business except for a material
302 breach of the lease.
303
304 (4) Except as may otherwise be provided in this article,
305 no manufacturer or franchisor shall sell, directly or
306 indirectly, any new motor vehicle to a consumer in this state,
307 except through a new motor vehicle dealer holding a
308 franchise for the line-make covering such new motor
309 vehicle. This subsection shall not apply to manufacturer or
310 franchisor sales of new motor vehicles to charitable
311 organizations, qualified vendors or employees of the
312 manufacturer or franchisor.
313
314 (5) Except when prevented by an act of God, labor
315 strike, transportation disruption outside the control of the

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manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered. All models offered for sale by the manufacturer, without any enrollment, surcharge, unreasonable facility or building or any other unreasonable type of upgrade requirement or acquisition fee, shall be available to the franchised dealer at no additional cost for that particular model of vehicle.

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

(1) As used in this section, “relocate” and “relocation” do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller’s last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor
shall give written notice to each new motor vehicle dealer of
the same line-make in the relevant market area of its
intention to establish an additional dealer or to relocate an
existing dealer within that relevant market area.

(3) Within sixty days after receiving the notice provided
in subsection (2) of this section, or within sixty days after
the end of any appeal procedure provided by the
manufacturer or distributor, a new motor vehicle dealer of
the same line-make within the affected relevant market area
may bring a declaratory judgment action in the circuit court
for the county in which the new motor vehicle dealer is
located to determine whether good cause exists for the
establishing or relocating of the proposed new motor vehicle
dealer: Provided, That a new motor vehicle dealer of the
same line-make within the affected relevant market area
shall not be permitted to bring such an action if the proposed
relocation site would be further from the location of the new
motor vehicle dealer of the same line-make than the location
from which the dealership is being moved. Once an action
has been filed, the manufacturer or distributor may not
establish or relocate the proposed new motor vehicle dealer
until the circuit court has rendered a decision on the matter.
An action brought pursuant to this section shall be given
precedence over all other civil matters on the court’s docket.
The manufacturer has the burden of proving that good cause
exists for establishing or relocating a proposed new motor
vehicle dealer.

(4) This section does not apply to the reopening in a
relevant market area of a new motor vehicle dealer that has
been closed or sold within the preceding two years if the
established place of business of the new motor vehicle
dealer is within four miles of the established place of
business of the closed or sold new motor vehicle dealer.
In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

(a) Permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

(b) Effect on the retail new motor vehicle business and the consuming public in the relevant market area;

(c) Whether it is injurious or beneficial to the public welfare;

(d) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

(e) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

(f) Growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

(g) The effect on the relocating dealer of a denial of its relocation into the relevant market area.
AN ACT to amend and reenact §17A-7-2 of the Code of West Virginia, 1931, as amended, relating to one-trip permits issued by the State Police, increasing the fee for issuance and providing for distribution of the fees collected.

Be it enacted by the Legislature of West Virginia:

That §17A-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. SPECIAL STICKERS.

§17A-7-2. Operation of motor vehicles by dealers or other persons under special stickers; application and fees; expiration.

(a) A member of the West Virginia State Police may at any detachment office, upon application therefor on a form prescribed by the commissioner, issue to a licensed dealer or any other person other than those specified in section one of this article, a paper sticker or decal to be affixed to the left side of the rear window of a motor vehicle or to the left rear of a vehicle which is not self-propelled. Such sticker or decal shall be of a size to be designated by the commissioner and
shall be serially numbered and shall have provision thereon
to indicate the date of issuance thereof.

(b) A fee of five dollars per sticker shall be collected and
dispersed as follows: two dollars and fifty cents shall be
deposited in the State Road Fund and two dollars and fifty
cents shall be deposited in the special revenue account within
the Division of Highways for the maintenance of the West
Virginia Welcome Centers and rest areas along interstate
highways in this state.

(c) Such sticker or decal shall be valid for forty-eight
hours after its issuance for the operation of a vehicle, whether
under its own power or while being towed, one time only
over the streets or highways, and upon being once affixed to
a vehicle shall become invalid for subsequent use on that or
any other vehicle.

CHAPTER 179

(H.B. 2481 - By Delegates Williams, Boggs and Tabb)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §17A-10-3 of the Code of West
Virginia, 1931, as amended, relating to registration fees for
vehicles and allowing a registrant to transfer the registration of
a Class C vehicle to another Class C type vehicle titled in the
name of the registrant.

Be it enacted by the Legislature of West Virginia:
That §17A-10-3 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-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

1. (1) Class A. -- The registration fee for all motor vehicles of this class is twenty-eight dollars and fifty cents. *Provided,* that the registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

2. (2) Class B. -- The registration fee for all motor vehicles of this class is as follows:

   (A) For declared gross weights of eight thousand one pounds to sixteen thousand pounds -- twenty-eight dollars plus five dollars for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds eight thousand pounds.

   (B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds -- seventy-eight dollars and fifty cents plus ten dollars for each
one thousand pounds or fraction of one thousand pounds that
the gross weight of the vehicle or combination of vehicles
exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand
pounds or more -- seven hundred thirty-seven dollars and
fifty cents plus fifteen dollars and seventy-five cents for each
one thousand pounds or fraction of one thousand pounds that
the gross weight of the vehicle or combination of vehicles
exceeds fifty-five thousand pounds.

(3) Class G. -- The registration fee for each motorcycle
or parking enforcement vehicle is eight dollars.

(4) Class H. -- The registration fee for all vehicles for this
class operating entirely within the state is five dollars; and for
vehicles engaged in interstate transportation of persons, the
registration fee is the amount of the fees provided by this
section for Class B, reduced by the amount that the mileage
of the vehicles operated in states other than West Virginia
bears to the total mileage operated by the vehicles in all states
under a formula to be established by the Division of Motor
Vehicles.

(5) Class J. -- The registration fee for all motor vehicles
of this class is eighty-five dollars. Ambulances and hearses
used exclusively as ambulances and hearses are exempt from
the special fees set forth in this section.

(6) Class M. -- The registration fee for all vehicles of this
class is seventeen dollars and fifty cents.

(7) Class farm truck. -- The registration fee for all motor
vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight
thousand one pounds to sixteen thousand pounds -- thirty
dollars.
(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds -- sixty dollars.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds -- ninety dollars.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds -- one hundred fifteen dollars.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds -- one hundred sixty dollars.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds -- two hundred five dollars.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds -- two hundred fifty dollars: \textit{Provided}, That the provisions of subsection (a), section eight, article one, chapter seventeen-е do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) \textit{Class R.} -- The annual registration fee for all vehicles of this class is twelve dollars.

(2) \textit{Class T.} -- The annual registration fee for all vehicles of this class is eight dollars.

(c) The fees paid to the division for a multi-year registration provided by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.
(d) The registration fee for all Class C vehicles is fifty dollars. On or before the first day of July, two thousand, all Class C trailers shall be registered for the duration of the owner's interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner: Provided, That a registrant may transfer a Class C registration plate from a trailer owned less than thirty days to another Class C trailer titled in the name of the registrant upon payment of the transfer fee prescribed in section ten of this article.

CHAPTER 180

(S.B. 412 - By Senators Kessler, Oliverio, Foster, Green, Hunter, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Hall and McKenzie)

[Passed February 27, 2007; in effect ninety days from passage.] [Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to providing penalties for violation of prohibited use of a handheld wireless communication device while driving by a minor holding a level one instruction permit or a level two intermediate driver's license.

Be it enacted by the Legislature of West Virginia:

That §17B-2-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-3a. Graduated driver's licenses.

(a) Any person under the age of eighteen may not operate a motor vehicle unless he or she has obtained a graduated
driver’s license in accordance with the three-level graduated
driver’s license system described in the following provisions.

(b) Any person under the age of twenty-one, regardless
of class or level of licensure, who operates a motor vehicle
with any measurable alcohol in his or her system is subject to
the provisions of section two, article five, chapter seventeen-c
of this code and section two, article five-a of said chapter.
Any person under the age of eighteen, regardless of class or
licensure level, is subject to the mandatory school attendance
provisions of section eleven, article eight, chapter eighteen of
this code.

(c) Level one instruction permit. -- An applicant who is
fifteen years or older meeting all other requirements
prescribed in this code may be issued a level one instruction
permit.

(1) Eligibility. -- The division shall not issue a level one
instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by the
provisions of section six of this article, and which is
accompanied by a writing, duly acknowledged, consenting to
the issuance of the graduated driver’s license and executed by
a parent or guardian entitled to custody of the applicant;

(B) Presents a certified birth certificate issued by a state
or other governmental entity responsible for vital records,
evidencing that the applicant meets the minimum age
requirement;

(C) Passes the vision and written knowledge examination
and completes the driving under the influence awareness
program, as prescribed in section seven of this article;

(D) Presents a current school enrollment form or
otherwise shows compliance with the provisions of section
eleven, article eight, chapter eighteen of this code; and
(E) Pays a fee of five dollars.

(2) Terms and conditions of instruction permit. -- A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) Under the direct supervision of a licensed driver, twenty-one years of age or older, or a driver’s education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) Between the hours of five a.m. and eleven p.m.;
(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

(d) Level two intermediate driver’s license. -- An applicant sixteen years of age or older, meeting all other requirements of the code, may be issued a level two intermediate driver’s license.

(1) Eligibility. — The division shall not issue a level two intermediate driver’s license unless the applicant:

(A) Presents a completed application as prescribed in section six of this article;

(B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately
(C) Has completed either a driver’s education course approved by the State Department of Education or thirty hours of behind-the-wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division: Provided, That nothing in this paragraph shall be construed to require any school or any county board of education to provide any particular number of driver’s education courses or to provide driver’s education training to any student;

(D) Presents a current school enrollment form or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of five dollars.

(2) Terms and conditions of a level two intermediate driver’s license. -- A level two intermediate driver’s license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver’s license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver’s license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and eleven p.m.;
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130 (B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of eleven p. m. and five a. m. except when the licensee is going to or returning from:

131 (i) Lawful employment;
132 (ii) A school-sanctioned activity;
133 (iii) A religious event; or
134 (iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

135 (C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

136 (D) Operates the vehicle with no more than three passengers under the age of nineteen, unless the passengers are family members, in addition to the driver;

137 (E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

138 (F) Maintains current school enrollment or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

139 (G) A holder of a level two intermediate driver’s license who is under the age of eighteen years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A law-enforcement officer may enforce the provisions of this paragraph only as a secondary action when a law-enforcement officer with probable cause detains a driver for a suspected violation of another provision
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of this code. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined twenty-five dollars; for a second offense be fined fifty dollars; and for a third or subsequent offense be fined seventy-five dollars.

Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver’s license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code.

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver’s license; and

Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver’s license, the licensee’s privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee’s eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver’s license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for an instruction permit, then a driver’s license in accordance with the provisions of sections five, six and seven of this article.

Level three, full Class E license. -- The level three license is valid until the day designated by the commissioner of the month in which the licensee attains the age of twenty-one. Unless otherwise provided in this section or any other
section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver’s license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

(B) Has held the level two intermediate license conviction free for the twelve-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the Combined Voter Registration and Driver’s Licensing Fund established in section twelve, article two, chapter three of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and
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(B) Pays a fee of two dollars and fifty cents for each year the license is valid. An additional fee of fifty cents shall be collected to be deposited in the Combined Voter Registration and Driver’s Licensing Fund established in section twelve, article two, chapter three of this code.

CHAPTER 181

(Com. Sub. for H.B. 2051 - By Delegates Webster, Proudfoot and Ellem)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §17C-6-7 and §17C-6-7a of the Code of West Virginia, 1931, as amended, all relating to including lasers as a method of proving the speed of vehicles.

Be it enacted by the Legislature of West Virginia:

That §17C-6-7 and §17C-6-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. SPEED RESTRICTIONS.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser.

§17C-6-7a. Prohibition of the use of traffic law photo-monitoring devices to detect or prove traffic law violations.

§17C-6-7. Prima facie evidence of speed by devices employing microwaves or reflected light; placing of signs relative to radar or laser.

The speed of a motor vehicle may be proved by evidence obtained by use of any device designed to measure and indicate or record the speed of a moving object by means of microwaves or reflected light, when such evidence is obtained by members of the department of public safety, by
police officers of incorporated municipalities in classes one, two and three, as defined in chapter eight-a of this code, and by the sheriff and his deputies of the several counties of the state. The evidence so obtained shall be accepted as prima facie evidence of the speed of such vehicle.

In order to inform and educate the public generally that speed of motor vehicles operating within the state is being tested by radar or laser mechanisms, the division of highways shall locate and place suitable and informative stationary and movable signs at strategic points on and along highways in each county of the state giving notice to the public that such radar or laser mechanisms are in use.

§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 or reflected light 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 182

(H.B. 2781 - By Delegate Hrutkay)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §17C-17-4 of the Code of West Virginia, 1931, as amended, relating to modifying the statutory limitation on the length of school buses.

Be it enacted by the Legislature of West Virginia:

That §17C-17-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-4. Height and length of vehicles and loads.

(a) A vehicle, including any load thereon, may not exceed a height of thirteen feet six inches, but the owner or owners of such vehicles shall be responsible for damage to any bridge or highway structure and to municipalities for any damage to traffic control devices or other highway structures where such bridges, devices or structures have a vehicle clearance of less than thirteen feet six inches.

(b) A motor vehicle, including any load thereon, may not exceed a length of forty feet extreme overall dimension, inclusive of front and rear bumper: Provided, That a motor home and school bus may not exceed a length of forty-five feet, exclusive of front and rear bumpers.
(c) Except as hereinafter provided in this subsection or in subsection (d) of this section, a combination of vehicles coupled together may not consist of more than two units and no combination of vehicles including any load thereon shall have an overall length, inclusive of front and rear bumpers, in excess of fifty-five feet except as provided in section eleven-b of this article and except as otherwise provided in respect to the use of a pole trailer as authorized in section five of this article. The limitation that a combination of vehicles coupled together may not consist of more than two units may not apply to: (1) A combination of vehicles coupled together by a saddle-mount device used to transport motor vehicles in a drive-away service when no more than three saddle mounts are used, if equipment used in the combination meets the requirements of the safety regulations of the United States Department of Transportation and may not exceed an overall length of more than seventy-five feet; or (2) a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer having an overall length, exclusive of front and rear bumpers, not exceeding sixty-five feet.

(d) A combination of two vehicles coupled together, one of which is a motor home, or a combination of vehicles coupled together, one of which is a travel trailer or folding camping trailer, may not exceed an overall length, exclusive of front and rear bumpers of sixty-five feet.

(e) Notwithstanding the provisions of subsections (a), (b), (c) and (d) of this section, the commissioner may designate, upon his or her own motion or upon the petition of an interested party, a combination vehicle length not to exceed seventy feet.

(f) The length limitations for truck tractor-semitrailer combinations and truck tractor-semitrailer-trailer combinations operating on the national system of interstate and defense highways and those classes of qualifying federal-aid primary system highways so designated by the United States secretary of transportation and those highways providing reasonable access to and from terminals, facilities for food, fuel, repairs and rest and points of loading and unloading for household goods carriers from such highways and further, as to other highways so designated by the West

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Virginia commissioner of highways, shall be as follows: The maximum length of a semitrailer unit operating in a truck tractor-semitrailer combination shall not exceed forty-eight feet in length except where semitrailers have an axle spacing of not more than thirty-seven feet between the rear axle of the truck tractor and the front axle of the semitrailer, such semitrailer shall be allowed to be not more than fifty-three feet in length and the maximum length of any semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination may not exceed twenty-eight feet in length and in no event shall any combinations exceed three units, including the truck tractor: Provided, That nothing herein contained shall impose an overall length limitation as to commercial motor vehicles operating in truck tractor-semitrailer or truck tractor-semitrailer-trailer combinations.

(g) The commissioner shall publish annually an official map designating the highways of the state and the various maximum vehicle lengths relating thereto.

CHAPTER 183

(S.B. 747 - By Senators Bowman, Barnes, Foster, Jenkins, McCabe, Plymale, Stollings, Sypolt, White and Yoder)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-1-5a; and to amend and reenact §8-1-7 of said code, all relating to creating the Municipal Home Rule Pilot Program; legislative findings and intent; eligibility requirements; creating the Municipal Home Rule Board; powers of the board and participating municipalities and metro governments; requiring the municipality to hold a public hearing and adopt a municipal ordinance prior to submission of a written plan; requiring performance review; reporting requirements; terminating pilot
program; certain grandfather provisions; and reaffirming home rule powers for all municipalities.

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 §8-1-5a; and to amend and reenact §8-1-7 of said code, all to read as follows:

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-5a. Pilot program to increase powers of municipal self government.

(a) The Legislature finds and declares that:

(1) The future economic progress for the State of West Virginia is directly related to the success of its municipalities in that stronger municipalities will make for a stronger West Virginia;

(2) Municipalities face numerous challenges managing their budgets and delivering services required by federal or state law or demanded by their constituents;

(3) Municipalities are sometimes restricted by state statutes, policies, rules and responsibilities that prevent them from carrying out their duties and responsibilities in a cost-effective, efficient and timely manner; and

(4) Authorizing pilot municipalities and metro governments in West Virginia to exercise broad-based home rule will allow the Legislature the opportunity to evaluate the
(b) It is the intent of the Legislature in enacting this section to establish a framework for municipalities within which new ideas can be explored to see if they can or should be implemented on a statewide basis.

(c) Effective the first day of July, two thousand seven, there is hereby created a pilot program to be known as the Municipal Home Rule Pilot Program authorizing five selected Class I, Class II and/or Class III municipalities and/or metro governments the authority to enact any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of this code.

(d) To be eligible to participate in the Municipal Home Rule Pilot Program the applicant shall:

(1) Be a Class I, Class II and/or Class III municipality and/or a metro government: Provided, That a municipality considering consolidation or establishing a metro government shall have no more than two years from the date it is selected for the pilot program to complete its consolidation or metro government process or its participation in the pilot program will terminate at the end of the two-year period; and

(2) Have a written plan stating in detail the following:

(A) The specific laws, policies, rules or regulations which prevent the municipality from carrying out its duties in the most cost-efficient, effective and timely manner;

(B) The problems created by the laws, policies, rules or regulations; and
(C) The proposed solutions to the problems, including all proposed changes to ordinances, acts, resolutions, rules and regulations.

(e) Effective the first day of July, two thousand seven, there is hereby created a Municipal Home Rule Board consisting of the following seven members:

1. The Governor, or a designee, who shall serve as chair;
2. The Executive Director of the West Virginia Development Office or a designee;
3. The chair of the Senate Committee on Government Organization or a designee;
4. The chair of the House of Delegates Committee on Government Organization or a designee;
5. One member shall be a representative of the business and Industry Council;
6. One member shall be a representative of the largest labor organization in the state; and
7. One member shall be a representative of the West Virginia Chapter of American Institute of Certified Planners.

(f) The board has the powers necessary to implement the provisions of this section, including the following:

1. Reviewing, evaluating and making recommendations to the proposed plans submitted by eligible municipalities and/or metro governments;
(2) Consulting with state agencies affected by the proposed plans;

(3) Selecting municipalities and/or metro governments to participate in the pilot program;

(4) Approving the plans of recommended pilot program participants, as submitted or as modified; and

(5) Authorizing amendments to approved plans.

(g) On or before the first day of January, two thousand eight, an eligible municipality and/or metro government wanting to participate in the pilot program shall submit a written plan as described in subdivision (2), subsection (d) of this section to the board.

(h) Prior to submitting a written plan, the municipality shall:

(1) Conduct a public hearing on the proposed written plan;

(2) Provide at least thirty days’ notice of the public hearing by a Class II legal advertisement;

(3) Make a copy of the proposed written plan available for public inspection at least thirty days prior to the public hearing; and

(4) After the public hearing, adopt a municipal ordinance authorizing the municipality to submit a proposed written plan to the Municipal Home Rule Board after the proposed municipal ordinance has been read two times.
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94 (i) On or before the first day of June, two thousand eight, the board shall select by a majority vote of the board at least one, but not more than five municipalities and/or metro governments to participate in the pilot program.

98 (j) The pilot municipalities and/or metro governments selected to participate in the pilot program shall have the following powers:

101 (1) The authority to pass any ordinances, acts, resolutions, rules and regulations not contrary to the constitutions of the United States or West Virginia, federal law or chapters sixty-a, sixty-one and sixty-two of this code as specified in their written and approved plans: Provided, That the pilot municipalities may not adopt any ordinance, rule, regulation or resolution or take any action that would create a defined contribution employee pension or retirement plan for its employees currently covered by a defined benefit pensions plan; and

111 (2) Any other powers necessary to implement the provisions of its approved plan.

113 (k) Before the first day of July, two thousand twelve, the Joint Committee on Government and Finance shall conduct a performance review on the pilot program and the participating municipalities and/or metro governments. The review shall include the following:

118 (1) An evaluation of the effectiveness of expanded home rule on the participating municipalities and/or metro governments;

121 (2) A recommendation as to whether the expanded home rule should be continued, reduced, expanded or terminated;

123 (3) A recommendation as to whether any legislation is necessary; and

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1 (4) Any other issues considered relevant.

1 (1) On or before the first day of January, two thousand thirteen, the Joint Committee on Government and Finance shall report to the Joint Committee on Government Organization the findings of the performance review.

1 (m) The pilot program terminates on the first day of July, two thousand thirteen.

1 (n) No ordinances, acts, resolutions, rules or regulations may be enacted by a municipality or metro government after the first day of July, two thousand thirteen, pursuant to the provisions of this section, unless otherwise authorized by the Legislature.

§8-1-7. Construction of powers and authority granted.

1 (a) The enumeration of powers and authority granted in this chapter shall not operate to exclude the exercise of other powers and authority fairly incidental thereto or reasonably implied and within the purposes of this chapter or in accordance with the provisions of the Municipal Home Rule Amendment to the constitution of this state, the powers and authority granted by such constitution, other provisions of this code and any existing charter. The provisions of this chapter shall be given full effect without regard to the common-law rule of strict construction and particularly when the powers and authority are exercised by charter provisions framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under the provisions of this chapter.

1 (b) Any charter provision framed and adopted or adopted by revision of a charter as a whole or adopted by charter amendment under provisions of former chapter eight-a of this code or under the provisions of this chapter which is beyond the power and authority of a municipality and any ordinance provision which is beyond the power and authority of a municipality shall be of no force and effect.
CHAPTER 184

(Com. Sub. for H.B. 2120 - By Delegates Boggs and Mahan)

[Passed February 19, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2007.]

AN ACT to amend and reenact §8-10-2 of the Code of West Virginia, 1931, as amended, relating to prescribing minimum standards for municipal judges; requiring criminal background checks of persons applying for municipal judgships; excluding persons convicted of certain offenses from serving as municipal judge; and requiring municipal judges receive continuing legal training.

Be it enacted by the Legislature of West Virginia:

That §8-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2. Municipal court for municipalities.

(a) Notwithstanding any charter provision to the contrary, any city may provide by charter provision and any municipality may provide by ordinance for the creation and maintenance of a municipal court, for the appointment or election of an officer to be known as municipal court judge and for his or her compensation, and authorize the exercise by the court or judge of the jurisdiction and the judicial
powers, authority and duties set forth in section one of this
article and similar or related judicial powers, authority and
duties enumerated in any applicable charter provisions, as set
forth in the charter or ordinance. Additionally, any city may
provide by charter provision and any municipality may
provide by ordinance, that in the absence of or in the case of
the inability of the municipal court judge to perform his or
her duties, the municipal court clerk or other official
designated by charter or ordinance may act as municipal
court judge: Provided, That the municipal court clerk or
other official designated by charter or ordinance to act as
municipal court judge shall comply with the requirements set
forth in subsections (b) and (c) of this section, as well as any
other requirements that the city by charter provision or the
municipality by ordinance may require.

(b) Any person who makes application for appointment
to, or who files to become a candidate in any election for
municipal judge, shall first submit to a criminal background
check, to be conducted by the State Police. The cost of the
criminal background check shall be paid by the applicant or
candidate. The result of each background check conducted
in accordance with this section shall be forwarded to the
municipal court clerk or recorder whose duty it is to review
the results and confirm the eligibility of the applicant or
candidate to serve as a municipal judge. No person convicted
of a felony or any misdemeanor crime set forth in articles
eight, eight-a, eight-b, eight-c or eight-d, chapter sixty-one,
of this code is eligible to become a municipal judge.

(c) Any person who assumes the duties of municipal
court judge who has not been admitted to practice law in this
state shall attend and complete the next available course of
instruction in rudimentary principles of law and procedure.
The course shall be conducted by the municipal league or a
like association whose members include more than one half of the chartered cities and municipalities of this state. The instruction must be performed by or with the services of an attorney licensed to practice law in this state for at least three years. Any municipal court judge shall, additionally, be required to attend a course, on an annual basis for the purpose of continuing education: Provided, That the forgoing additional education requirement does not apply to municipal judges who are attorneys admitted to practice in this state. The cost of any course referred to in this section shall be paid by the municipality that employs the municipal judge.

(d) Only a defendant who has been charged with an offense for which a period of confinement in jail may be imposed is entitled to a trial by jury. If a municipal court judge determines, upon demand of a defendant, to conduct a trial by jury in a criminal matter, it shall follow the procedures set forth in the rules of criminal procedure for magistrate courts promulgated by the Supreme Court of Appeals, except that the jury in municipal court shall consist of twelve members.

CHAPTER 185

(H.B. 2204 - By Delegates Perry, Stemple and Cann)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]

AN ACT to amend and reenact §8-14-24 of the Code of West Virginia, 1931, as amended, relating to providing that a retiring municipal police officer may keep his or her service revolver at no charge; and providing exceptions.
Be it enacted by the Legislature of West Virginia:

That §8-14-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-24. Right to receive complete standard uniform; right to acquire badge; and right to keep service revolver.

1 (a) A police officer, upon honorable retirement, is authorized to maintain at his or her own cost a complete standard uniform from the law-enforcement agency of which he or she was a member, and shall be issued an identification card indicating his or her honorable retirement from the law-enforcement agency. The uniform may be worn by the officer in retirement only on the following occasions: Police Officer's Memorial Day, Law-Enforcement Appreciation Day, at the funeral of a law-enforcement officer or during any other police ceremony. The honorably retired officer is authorized to acquire a badge of the law-enforcement agency from which he or she is retired with the word "retired" placed on it.

13 (b) Upon retirement, a police officer is entitled to keep, without charge, his or her service revolver, after a determination by the chief of police:
MUNICIPALITIES

(1) That the police officer is retiring honorably with at least twenty years of recognized law-enforcement service; or

(2) That the police officer is retiring with less than twenty years of service and that he or she is totally physically disabled as a result of service as a police officer.

(c) Notwithstanding the provisions of subsection (b) of this section, the chief of police may not award a service revolver to any police officer who has been declared mentally incompetent by a licensed physician or a court of law, or who, in the opinion of the chief of police, constitutes a danger to any person or the community.

CHAPTER 186

(S.B. 615 - By Senators Kessler, Edgell and Hunter)

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-19-2, relating to authorizing a municipality that owns and operates an electric power system to enter into certain contracts with other parties to purchase electric power and energy from certain projects.

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 §8-19-2, to read as follows:
MUNICIPALITIES

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS
AND ELECTRIC POWER SYSTEMS.

PART II. LIMITATIONS ON SALE OR LEASE OF
CERTAIN MUNICIPAL WATERWORKS.

§8-19-2. Contracts for purchase of electric power or energy by
a municipality; definitions; requirements;
payments; rates and charges.

1 (a) For the purposes of this section:

2 (1) “Contract” means an agreement entered into by a
3 municipality with any other party for the purchase of electric
4 output, capacity or energy from a project as defined herein.

5 (2) “Any other party” means any other legal entity,
6 including, but not limited to, another municipality, political
7 subdivision, public authority, agency or instrumentality of
8 any state or the United States, a partnership, a limited
9 partnership, a limited liability company, a corporation, an
10 electric cooperative or an investor-owned utility existing
11 under the laws of any state; and

12 (3) “Project” or “projects” means systems or facilities
13 owned by another party and used for the generation,
14 transmission, transformation or supply of electric power, or
15 any interest in them, whether an undivided interest as a tenant
16 in common or otherwise, or any right to the output, capacity
17 or services thereof.
(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provide that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable or operating and notwithstanding the suspension, interruption, interference, reduction or curtailment of the output of a project or the power and energy contracted for and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entities' obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under subsection (b) of this section may extend for more than fifty years or fifty years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency, commission, instrumentality or political subdivision thereof except as otherwise specifically required by law.
(d) A contract under subsection (b) of this section may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the municipality or upon any of its income, receipts or revenues, except the revenues of the municipality’s electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of subsection (b) of this section is obligated to fix, charge and collect rents, rates, fees and charges for electric power and energy and other services it sells, furnishes or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: Provided, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of section four-b, article two, chapter twenty-four of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.
AN ACT to amend and reenact §8-19-21 of the Code of West Virginia, 1931, as amended, relating to municipal and county waterworks systems and specifications for water mains generally; requiring the installation of fire hydrants on certain water mains; establishing requirements and limitations thereto; requiring a study of the on cost, effect and feasibility of an internal hydrant valve; and requiring authorization from the Department of Health and Human Resources for certain installations.

Be it enacted by the Legislature of West Virginia:

That §8-19-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.


1 Considering the importance of public fire protection, any state or local government, public service district, public or private utility which installs or constructs water mains, shall ensure that all new mains specifically intended to provide fire protection are not less than six inches in diameter. Effective the first day of July, two thousand seven, when any state or local government, public service district, public or private utility installs or constructs water mains along a platted...
roadway or a public highway, using a six inch or greater line, that is specifically designed to provide fire protection, the state or local government, public service district, public or private utility shall install fire hydrants at intervals of not more than two thousand feet, unless there are no dwellings or businesses located one thousand feet from such proposed hydrant: Provided, That the Legislature shall study the effect, cost and feasibility of the internal hydrant valve and report the findings of that study to the regular session of the Legislature in the year two thousand and eight. A permit or other written approval shall be obtained from the Department of Health and Human Resources for each hydrant or group of hydrants installed in compliance with section nine, article one, chapter sixteen of the West Virginia Code as amended: Provided, however, That all newly constructed water distribution systems transferred to a public or private utility shall have mains at least six inches in diameter where fire flows are required by the public or private utility: Provided further, That the utility providing service has sufficient hydraulic capacity as determined by the Department of Health and Human Resources.

CHAPTER 188

(S.B. 139 - By Senators Kessler, Foster, Green, Jenkins, Minard, Stollings, Wells, White, Barnes, Caruth, Deem, Hall, McKenzie and Yoder)

[Passed February 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on February 20, 2007.]

AN ACT to amend and reenact §48-25-101 and §48-25-103 of the Code of West Virginia, 1931, as amended, all relating to petition for change of name; contents thereof; and when courts may or may not order change of name.

Be it enacted by the Legislature of West Virginia:
That §48-25-101 and §48-25-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all 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.

§48-25-103. When court may or may not order 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, may apply 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 or that he or she is a nonresident of the county who was born in the county, was married in the county and was previously a resident of the county for a period of at least fifteen years;

(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 the 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;
(8) The petitioner is not a convicted felon in any jurisdiction; and

(9) The name change sought is not for any purpose of evading detection, identification or arrest by any local, state or federal law-enforcement agency.

(b) Prior to filing the petition, the person shall cause a notice of the time and place that the application will be made to 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 for the publication is the county: Provided, That the publication shall contain a provision that the hearing may be rescheduled without further notice or publication.

§48-25-103. When court may or may not order change of name.

(a) Upon the filing of the verified petition, and upon proof of the publication of the notice and of the matters set forth in the petition, and being satisfied that no injury will be done to any person by reason of the change, and upon a finding that all representations the applicant has affirmed pursuant to subsection (a), section one hundred one of this article are true and the applicant is not prohibited from obtaining a name change pursuant to this article, that reasonable and proper cause exists for changing the name of petitioner and that the change is not desired because of any fraudulent or evil intent on the part of the petitioner, the court or judge may order a change of name.

(b) The court may not grant any change of name for any person convicted of any felony during the time that the person is incarcerated.

(c) The court may not grant any change of name for any person required to register with the State Police pursuant to the provisions of article twelve, chapter fifteen of this code during the period that the person is required to register.

(d) The court may not grant a change of name for persons convicted of first degree murder in violation of section one,
article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

(e) The court may not grant a change of name of any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

CHAPTER 189

(S.B. 667 - By Senators Sprouse, Foster, McCabe, Wells, Jenkins, Hunter, Oliverio and Plymale)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-10-10, all relating to providing certain student financial aid for certain military service; providing for the payment of tuition and certain fees for members of the West Virginia Army National Guard and West Virginia Air National Guard enrolled in certain graduate study; and providing tuition and certain fee waivers to certain military recipients of the Medal of Honor or a Purple Heart Medal.

Be it enacted by the Legislature of West Virginia:

That §15-1B-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be
amended by adding thereto a new section, designated §18B-10-10, all to read as follows:

Chapter
15. Public Safety.
18B. Higher Education.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1B. NATIONAL GUARD.

*§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the Army National Guard or Air National Guard who is enrolled in a course of undergraduate study or a master’s degree program and is attending any accredited college, university, business or trade school located in West Virginia or is attending any aviation school located in West Virginia for the purpose of taking college-credit courses, may be entitled to payment of tuitions and fees at that college, university, business or trade school or aviation school during the period of his or her service in the National Guard. The Adjutant General may prescribe criteria of eligibility for payment of tuition and fees at the college, university, business or trade school or aviation school. The payment is contingent upon appropriations being made by the Legislature for this express purpose. A member may receive payment for only one master’s degree pursuant to this section.

(b) The amount of the payment for members attending a state-supported school shall be determined by the Adjutant General and may not exceed the actual amount of tuition and fees at the school. The amount of the payment for members attending a private school shall be determined by the

*CLERK’S NOTE: This section was also amended by H.B. 2931 (Chapter 20), which passed prior to this act.
Adjutant General, but in any event may not exceed the highest amounts payable at any state-supported school.

(c) Any member of the Army National Guard or Air National Guard who is enrolled in a course of undergraduate study or a master’s degree program and is attending any accredited college or university located in West Virginia and is receiving payments under a federally funded continuing education system may be entitled to payment of tuition and fees at that college or university during his or her period of service in the Army National Guard or Air National Guard: Provided, That the sum of payments received under this subsection and a federally funded continuing education system may not exceed the actual amount of tuition and fees at the school and in no event may exceed the highest amounts payable at any state-supported school. The payments are contingent upon appropriations being made by the Legislature for this express purpose.

(d) The Adjutant General may, in lieu of the tuition payment authorized by this section, pay an amount equal to the amount of tuition which otherwise would have been paid directly to members of the West Virginia Army National Guard or West Virginia Air National Guard who are participating in the PROMISE Scholarship program provided in article seven, chapter eighteen-c of this code.

(e) A member of the West Virginia Army National Guard or West Virginia Air National Guard who is receiving payments for tuition and fees under this section and is discharged from the military service due to wounds or injuries received in the line of duty may continue to receive payments for tuition and fees under this section as if he or she were still a member.
(f) The Adjutant General shall administer the tuition and fee payments authorized under this section and shall propose policies to implement the provisions of this section.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-10. The Medal of Honor and Andrew J. Trail Purple Heart Recipient Tuition Waiver.

(a) This section is known as the Medal of Honor and Andrew J. Trail Purple Heart Recipient Tuition Waiver.

(b) A state institution of higher education shall waive undergraduate tuition and mandatory fee charges for a state resident that has been honorably discharged from any branch of the United States armed forces if that resident:

(1) Has received the Medal of Honor or a Purple Heart Medal. The waiver pursuant to this subdivision is for the amount of tuition and mandatory fee charges that exceeds the total amount of any state and federal education benefits, grants or scholarships received by the resident;

(2) Has received the Medal of Honor or a Purple Heart Medal and sustained wounds during military combat that resulted in either a permanent disability or a loss of limb. The waiver pursuant to this subdivision is for the amount of tuition and mandatory fee charges that exceeds state and federal education benefits, grants or scholarships received by the resident that are designated solely for tuition and mandatory fees.

(c) Tuition and mandatory fee waivers provided pursuant to this section are not counted when determining the
maximum number of waivers permitted at an institution by section five of this article.

(d) A tuition and mandatory fee waiver is available pursuant to this section for a maximum of eight semesters.

CHAPTER 190

(S.B. 389 - By Senators Fanning, Bowman and Barnes)

[Passed March 5, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend and reenact §20-1-2 of the Code of West Virginia, 1931, as amended, relating to including blue catfish in the definition of game fish.

Be it enacted by the Legislature of West Virginia:

That §20-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

"Agency" means any branch, department or unit of the state government, however designated or constituted.

"Alien" means any person not a citizen of the United States.
"Bag limit" or "creel limit" means the maximum number of wildlife which may be taken, caught, killed or possessed by any person.

"Big game" means elk, deer, black bears, wild boars and wild turkeys.

"Bona fide resident, tenant or lessee" means a person who permanently resides on the land.

"Citizen" means any native-born citizen of the United States and foreign-born persons who have procured their final naturalization papers.

"Closed season" means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

"Commission" means the Natural Resources Commission.

"Commissioner" means a member of the advisory commission of the Natural Resources Commission.

"Director" means the Director of the Division of Natural Resources.

"Fishing" or "to fish" means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

"Fur-bearing animals" include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.
"Game" means game animals, game birds and game fish as herein defined.

"Game animals" include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly called red squirrels, and gray squirrels and all their color phases - red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) The anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and gallinule; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); (e) the columbidae, commonly known as doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the corvidae, commonly known as crows.

"Game fish" include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) blue catfish, (u) sauger; and (v) all game fish hybrids.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals: Provided, That the definition of "hunt" does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.
"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the Migratory Bird Treaty Act, for the protection of migratory birds and game mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not been a domiciled resident of the State of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner and shall include both the first and the last day of the season or period designated by the director.

"Person", except as otherwise defined elsewhere in this chapter, means the plural "persons" and shall include individuals, partnerships, corporations or other legal entities.

"Preserve" means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".
"Resident" means any person who is a citizen of the United States and who has been a domiciled resident of the State of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit: Provided, That a member of the armed forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service and any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition, shall be considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other than a commercial game farm, commercial fish preserve, place or pond, where any wild bird, game bird, unprotected bird, game animal or fur-bearing animal is kept in confinement for the attraction and amusement of the people for commercial purposes.

“Small game” includes all game animals, furbearing animals and game birds except elk, deer, black bears, wild boars and wild turkeys.

"Take" means to hunt, shoot, pursue, lure, kill, destroy, catch, capture, keep in captivity, gig, spear, trap, ensnare, wound or injure any wildlife, or attempt to do so: Provided, That the definition of “take” does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

"Unprotected birds" shall include: (a) The English sparrow; (b) the European starling; and (c) the cowbird.

"Wild animals" means all mammals native to the State of West Virginia occurring either in a natural state or in captivity, except house mice or rats.
"Wild birds" shall include all birds other than: (a) Domestic poultry - chickens, ducks, geese, guinea fowl, peafowls and turkeys; (b) psittacidae, commonly called parrots and parakeets; and (c) other foreign cage birds such as the common canary, exotic finches and ring dove. All wild birds, either: (i) Those occurring in a natural state in West Virginia; or (ii) those imported foreign game birds, such as waterfowl, pheasants, partridges, quail and grouse, regardless of how long raised or held in captivity, shall remain wild birds under the meaning of this chapter.

"Wildlife" means wild birds, wild animals, game and fur-bearing animals, fish (including minnows,) reptiles, amphibians, mollusks, crustaceans and all forms of aquatic life used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the director as an inviolate refuge or sanctuary for the protection of designated forms of wildlife.

CHAPTER 191


[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §20-2-12 of the Code of West Virginia, 1931, as amended, relating to transportation of wildlife outside of the state; 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 in this section.

(1) 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.

(2) 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.

(3) A person may transport 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 beyond the limits of the state.

(4) A person legally entitled to possess an animal according to section four, article two of this chapter may transport that animal beyond the limits of the state.

(b) 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.
(c) 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.

(d) 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.

(e) 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 beyond the limits of the state.

CHAPTER 192

(H.B. 2908 - By Delegates Talbott, Argento, Fragale, laquinta, Caputo and Manchin)

[Passed March 2, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to removing an outdated reference to the assessed value of livestock used to determine the value of livestock killed by a bear.

Be it enacted by the Legislature of West Virginia:

That §20-2-22a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§20-2-22a. Hunting, tagging and reporting bear; procedures applicable to property destruction by bear; penalties.

(a) No person in any county of this state shall hunt, capture, or kill any bear, or have in his or her possession any bear or bear parts, except during the hunting season for bear and in the manner designated by rules promulgated by the Division of Natural Resources and as provided in this section. For the purposes of this section, bear parts include, but are not limited to, the pelt, gallbladder, skull and claws of bear.

(b) A person who kills a bear shall, within twenty-four hours after the killing, deliver the bear or fresh skin to a conservation officer or checking station for tagging. A Division of Natural Resources tag shall be affixed to it before any part of the bear may be transported more than seventy-five miles from the point of kill. The Division of Natural Resources tag shall remain on the skin until it is tanned or mounted. Any bear or bear parts not properly tagged shall be forfeited to the state for disposal to a charitable institution, school or as otherwise designated by the Division of Natural Resources.

(c) It is unlawful:

(1) To hunt bear without a bear damage stamp as prescribed in section forty-four-b of this article, in addition to a hunting license as prescribed in this article;

(2) To hunt a bear with: (A) A shotgun using ammunition loaded with more than one solid ball; (B) a rifle of less than twenty-five caliber using rimfire ammunition; or (C) a crossbow;
(3) To kill or attempt to kill any bear through the use of poison, explosives, snares, steel traps or deadfalls other than as authorized in this section;

(4) To shoot at or kill a bear cub weighing less than one hundred pounds or to kill any bear accompanied by a cub;

(5) To possess any part of a bear not tagged in accordance with the provisions of this section;

(6) To enter a state game refuge with firearms for the purpose of pursuing or killing a bear except under the direct supervision of division personnel;

(7) To hunt bear with dogs or to cause dogs to chase bear during seasons other than those designated by the Division of Natural Resources for the hunting of bear;

(8) To pursue a bear with a pack of dogs other than the pack used at the beginning of the hunt once the bear is spotted and the chase has begun;

(9) To possess, harvest, sell or purchase bear parts obtained from bear killed in violation of this section;

(10) To organize for commercial purposes or to professionally outfit a bear hunt or to give or receive any consideration whatsoever or any donation in money, goods or services in connection with a bear hunt notwithstanding the provisions of sections twenty-three and twenty-four of this article; or

(11) For any person who is not a resident of this state to hunt bear with dogs or to use dogs in any fashion for the purpose of hunting bear in this state except in legally authorized hunts.
(d) The following provisions apply to bear destroying property:

(1) (A) Any property owner or lessee who has suffered damage to real or personal property, including loss occasioned by the death or injury of livestock or the unborn issue of livestock, caused by an act of a bear may complain to any conservation officer of the Division of Natural Resources for protection against the bear.

(B) Upon receipt of the complaint, the officer shall immediately investigate the circumstances of the complaint. If the officer is unable to personally investigate the complaint, he or she shall designate a wildlife biologist to investigate on his or her behalf.

(C) If the complaint is found to be justified, the officer or designated person may, together with the owner and other residents, proceed to hunt, destroy or capture the bear that caused the property damage: Provided, That only the conservation officer or the wildlife biologist shall determine whether to destroy or capture the bear and whether to use dogs to capture or destroy the bear: Provided, however, That, in the event out-of-state dogs are used in the hunt, the owners of the dogs are the only nonresidents permitted to participate in hunting the bear.

(2) (A) When a property owner has suffered damage to real or personal property as the result of an act by a bear, the owner shall file a report with the Director of the Division of Natural Resources. The report shall state whether or not the bear was hunted and destroyed and, if so, the sex, weight and estimated age of the bear. The report shall also include an appraisal of the property damage occasioned by the bear duly signed by three competent appraisers fixing the value of the property lost.
(B) The report shall be ruled upon and the alleged damages examined by a commission comprised of the complaining property owner, an officer of the division and a person to be jointly selected by the officer and the complaining property owner.

(C) The division shall establish the procedures to be followed in presenting and deciding claims under this section in accordance with article three, chapter twenty-nine-a of this code.

(D) All claims shall be paid in the first instance from the Bear Damage Fund provided in section forty-four-b of this article. In the event the fund is insufficient to pay all claims determined by the commission to be just and proper, the remainder due to owners of lost or destroyed property shall be paid from the special revenue account of the Division of Natural Resources.

(3) In all cases where the act of the bear complained of by the property owner is the killing of livestock, the value to be established is the fair market value of the livestock at the date of death. In cases where the livestock killed is pregnant, the total value shall be the sum of the values of the mother and the unborn issue, with the value of the unborn issue to be determined on the basis of the fair market value of the issue had it been born.

(e) Criminal penalties. -- (1) Any person who commits a violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars, which fine is not subject to suspension by the court, imprisoned in jail not less than thirty nor more than one hundred days, or both fined and imprisoned. Further, the
person's hunting and fishing licenses shall be suspended for two years.

(2) Any person who commits a second violation of the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two thousand dollars nor more than seven thousand five hundred dollars, which fine is not subject to suspension by the court, imprisoned in jail not less than thirty days nor more than one year, or both fined and imprisoned. The person's hunting and fishing licenses shall be suspended for life.

(3) Any person who commits a third or subsequent violation of the provisions of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars, which fine is not subject to suspension by the court, imprisoned in a correctional facility not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 193

(H.B. 2703 - By Delegates Campbell, Williams, Eldridge, Hrutkay, Stemple, Paxton and Martin)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §20-2-28 of the Code of West Virginia, 1931, as amended, relating to authorizing certain students receiving instruction in fly fishing to fly fish while under the supervision of an instructor without obtaining a license; conditions.
Be it enacted by the Legislature of West Virginia:

That §20-2-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-28. When licenses or permits not required.

Persons in the following categories shall not be required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of such land may hunt, trap or fish on their own land during open season in accordance with the laws and regulations applying to such hunting, trapping and fishing without obtaining a license to do so unless such lands have been designated as a wildlife refuge or preserve.

(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license to do so. A written statement or certificate from a duly licensed physician of this state showing the resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of the resident at all times while he or she is fishing in this state.

(c) All residents of West Virginia on active duty in the Armed Forces of the United States of America, while on leave or furlough, shall have the right and privilege to hunt, trap or fish in season in West Virginia without obtaining a license to do so. Leave or furlough papers shall serve in lieu of any such license and shall be carried on the person at all times while trapping, hunting or fishing.
(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older is not required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of such license any such person shall at all times while hunting, trapping or fishing carry on his or her person a valid West Virginia driver’s license or nondriver identification card issued by the Division of Motor Vehicles.

(e) Residents of the state of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac River without obtaining licenses to do so, but the hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the state of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac River from the Maryland banks of said river to licensed residents of West Virginia without requiring said residents to obtain Maryland hunting and fishing licenses.

(f) Residents of the state of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio River or from the West Virginia banks of the river without obtaining licenses to do so, but the hunting or fishing shall be confined to fish and waterfowl of the river proper and to points on West Virginia tributaries and embayments identified by the director: Provided, That the state of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of the river to licensed residents of West Virginia without requiring the residents to obtain Ohio hunting and fishing licenses.

(g) Any resident of West Virginia who was honorably discharged from the Armed Forces of the United States of
America and who receives a veteran’s pension based on total permanent service-connected disability as certified to by the Veterans Administration shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while said veteran is hunting, trapping or fishing.

(h) Any disabled veteran who is a resident of West Virginia and who, as certified to by the Commissioner of Motor Vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by such disabled veteran as provided in section eight, article ten, chapter seventeen-a of this code shall be permitted to hunt, trap or fish in this state without obtaining a license therefor. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the disabled veteran, manner of applying for and receiving the certification and requirements as to identification while the disabled veteran is hunting, trapping or fishing.

(i) Any resident or inpatient in any state mental health, health or benevolent institution or facility may fish in this state, under proper supervision of the institution involved, without obtaining a fishing license to do so. A written statement or certificate signed by the superintendent of the mental health, health or benevolent institution or facility in which the resident or inpatient, as the case may be, is institutionalized shall serve in lieu of a fishing license and
shall be carried on the person of the resident or inpatient at all times while he or she is fishing in this state.

(j) Any resident who is developmentally disabled, as certified by a physician and the Director of the Division of Health, may fish in this state without obtaining a fishing license to do so. As used in this section, “developmentally disabled” means a person with a severe, chronic disability which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Results in substantial functional limitations in three or more of the following areas of major life activity: (A) Self-care; (B) receptive and expressive language; (C) learning; (D) mobility; (E) self-direction; (F) capacity for independent living; and (G) economic self-sufficiency; and

(4) Reflects the person’s need for a combination and sequence of care, treatment or supportive services which are of lifelong or extended duration and are individually planned and coordinated.

(k) A student eighteen years of age or younger receiving instruction in fly fishing in a public, private, parochial or Christian school in this state may fly fish in the state for catch and release only without obtaining a fishing license to do so while under the supervision of an instructor authorized by the school.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-29, relating to authorizing the Director of the Division of Natural Resources to exempt site-specific data on certain rare plant or animal species and their habitats from disclosure under the Freedom of Information Act; providing exceptions thereto; and placing limitations on the use of released 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 §20-2-29, to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.


(a) The director may exempt from disclosure under the Freedom of Information Act, article one, chapter twenty-nine-b of this code, any record concerning the site-specific location of an animal species protected under the Endangered Species Act of 1973, 7 U. S. C. § 136, a plant protected under the Plant Variety Protection Act, 7 U. S. C. § 2321:2583 and any plant or animal species native to West Virginia determined by the director to be sensitive and in need of conservation to maintain viability or existence.
(b) The director may not deny the release of records under subsection (a) of this section if requested:

(1) By the owner of the land upon which the resource is located;

(2) By an entity which can take the land through the right of eminent domain; or

(3) For scientific purposes which include, but are not limited to, conservation and education, by a person or entity that demonstrates to the director's satisfaction that the request for information is necessary, will not cause harm to the plant or animal species, and that the person or entity will use the information only for the limited purpose which is the basis for the request of information. The director retains the right to provide any such data in a form which in his or her opinion, is of sufficient resolution to satisfy that request and is not obligated to provide exact coordinate data.

(c) Persons or entities receiving records under this subsection may not release the information to the public or release the information to another entity for commercial purposes.

CHAPTER 195

(S.B. 376 -By Senators Fanning, Bowman and Barnes)

[Passed February 27, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §20-2-50 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to assess a fee for processing scientific collecting permits.

Be it enacted by the Legislature of West Virginia:
That §20-2-50 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-50. Permit to hunt, kill, etc., wildlife for scientific or propagation purposes.

The director may issue a permit to a person to hunt, kill, take, capture or maintain in captivity wildlife exclusively for scientific purposes, but not for any commercial purposes. Any person desiring to collect or procure any wildlife, including any body tissue, organ or other portion thereof, eggs, nesting materials or other materials from the habitat of such wildlife shall be required to make application to the director for a scientific collecting permit. The director shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the issuance of the permits. A permit may be issued only upon written application to the director setting forth at least:

(1) The number and kind of wildlife to be taken;
(2) The purpose and manner of taking;
(3) The name, residence, profession and educational or scientific affiliation of the person applying for the permit; and
(4) The geographic location where the collection or procurement is planned to take place.

A fee, to be set at the discretion of the director, shall accompany the application. No permit may be issued for the purpose of killing deer and bear.
CHAPTER 196

(S.B. 611 - By Senator Fanning)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §20-5-16 of the Code of West Virginia, 1931, as amended, relating to allowing the Director of the Division of Natural Resources to enter into long-term contracts with third parties to construct recreational facilities and cabins.

Be it enacted by the Legislature of West Virginia:

That §20-5-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION

§20-5-16. Authority to enter into contracts with third parties to construct recreational facilities and cabins; public comment.

1 (a) Notwithstanding any other provision of this code to the contrary, in addition to all other powers and authority vested in the director, he or she is hereby authorized and empowered to:

5 (1) Enter into contracts with third parties for the financing, construction and operation of recreational, lodging
and ancillary facilities at Chief Logan State Park, Beech Fork State Park, Tomlinson Run State Park, Stonewall Jackson Lake State Park, Lost River State Park and Canaan Valley Resort State Park. The contracts may allow and recognize both direct and subsidiary investment arrangements. The term of the contracts may not exceed a period of twenty-five years, at which time the full title to the recreational facilities shall vest in the state;

(2) Enter into contracts with third parties for the construction, but not the operation, of cabins at any state park or forest. Upon completion of the construction of the cabins, full title to the cabins shall immediately vest in the state and the cabins shall be operated by the parks and recreation section;

(3) Authorize the construction of at least five cabins by any single third party in state parks and state forests which do not offer such facilities on the effective date of this subsection; and

(4) Propose emergency and legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, that set the conditions upon which the director may enter into a contract with a single third party proposing to construct cabins.

(b) All contracts shall be presented to the Joint Committee on Government and Finance for review and comment prior to execution.

(c) A contract may provide for renewal for the purpose of permitting continued operation of the facilities at the option of the director for a term or terms not to exceed ten years.

(d) No extension or renewal beyond the original 25-year term may be executed by the director absent the approval of the Joint Committee on Government and Finance.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-22, relating to providing notice of new road construction and road maintenance for access to gas and oil wells in state forests; requiring a public comment period; establishing notice criteria; and requiring the Director of the Division of Natural Resources to propose legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-5-22, to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§20-5-22. Powers and duties of the director relating to oil and gas access roads on state forests.

(a) In addition to the requirements of article six, chapter twenty-two of this code, a party applying for the
well work permit within a state forest shall publish a Class I-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code in a qualified newspaper at least sixty days prior to submitting an application with the Department of Environmental Protection. The notice shall state that the Division of Natural Resources will accept public comments prior to the party’s application to the Department of Environmental Protection and shall give a postal address and an email address where the public may file comments.

(b) For all new oil and gas road construction proposed in subsection (a) of this section within state forests, written notice shall be provided to the Director, the Division of Forestry and the State Forest Superintendent by the party applying for the well work permit forty-five days before the application of the well work permit is filed with the Department of Environmental Protection.

(c) For routine maintenance of the access roads within the state forest, notice shall be provided to the Director, the Director of the Division of Forestry and the State Forest Superintendent by the well operator for maintenance of the well access road five days before the motorized equipment is to enter the state forest except in the event of an emergency.

(d) The Director of the Division of Natural Resources shall propose emergency and legislative rules in accordance with article three, chapter twenty-nine of this code in consultation with the Department of Environmental Protection and the Division of Forestry that set forth the conditions upon which the permittee may access the land for the purpose of well work in a state forest as permitted by law.
AN ACT to amend and reenact §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, all relating to modifying the Nurse Overtime and Patient Safety Act; requiring posting of notice of nurse's rights; requiring Commissioner of Labor to establish by rule a notification procedure, including signs that must be posted; and requiring commissioner to keep complaints anonymous until a finding of merit.

Be it enacted by the Legislature of West Virginia:

That §21-5F-3 and §21-5F-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-3. Hospital nursing overtime limitations and requirements.

(a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or through coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse’s judgment, jeopardize patient or employee safety.
(b) Notwithstanding subsections (a) and (g) of this section, a nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.

(c) Subsections (a) and (g) of this section do not apply when a nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

(d) Notwithstanding subsections (a) and (g) of this section, a nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.

(e) Subsection (a) of this section does not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of this article by incorporating a procedure for the hospital to require overtime.

(f) Subsection (a) of this section does not apply to voluntary overtime.

(g) In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. Except as provided in subsections (b), (c) and (d) of this section, no nurse shall work more than sixteen hours in a twenty-four hour period. The nurse is responsible for informing the employer hospital of other employment experience during the twenty-four hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts
shall be made by the hospital to find a replacement nurse to
work.

Each hospital shall designate an anonymous process for
patients and nurses to make staffing complaints related to
patient safety.

(h) Each hospital shall post, in one or more conspicuous
place or places where notices to employee nurses are
customarily posted, a notice in a form approved by the
commissioner setting forth a nurse's rights under this article.

§21-5F-4. Enforcement; offenses and penalties.

(a) Pursuant to the powers set forth in article one of this
chapter, the Commissioner of Labor is charged with the
enforcement of this article. The commissioner shall propose
legislative and procedural rules in accordance with the
provisions of article three, chapter twenty-nine-a of this code
to establish procedures for enforcement of this article. These
rules shall include, but are not limited to, provisions to
protect due process requirements, a hearings procedure, an
appeals procedure, and a notification procedure, including
any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner
regarding an alleged violation of the provisions of this article
must be made within thirty days following the occurrence of
the incident giving rise to the alleged violation. The
commissioner shall keep each complaint anonymous until the
commissioner finds that the complaint has merit. The
commissioner shall establish a process for notifying a
hospital of a complaint.

(c) The administrative penalty for the first violation of
this article is a reprimand.
(d) The administrative penalty for the second offense of this article is a reprimand and a fine not to exceed five hundred dollars.

(e) The administrative penalty for the third and subsequent offenses is a fine of not less than two thousand five hundred dollars and not more than five thousand dollars for each violation.

(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense.

(g)(1) All moneys paid as administrative penalties pursuant to this section shall be deposited into the Health Care Cost Review Fund provided by section eight, article twenty-nine-b, chapter sixteen of this code.

(2) In addition to other purposes for which funds may be expended from the Health Care Cost Review Fund, the West Virginia Health Care Authority shall expend moneys from the fund, in amounts up to but not exceeding amounts received pursuant to subdivision (1) of this subsection, for the following activities in this state:

(A) Establishment of scholarships in medical schools;

(B) Establishment of scholarships for nurses training;

(C) Establishment of scholarships in the public health field;

(D) Grants to finance research in the field of drug addiction and development of cures therefor;

(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and

(F) Grants for public health research, education and care.
AN ACT to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to parking areas designated for use by persons with a mobility impairment; removing the requirement that certain parking areas be provided without cost; authorizing chiropractor, advanced nurse practitioner or physician’s assistant to verify impairment for the purpose of the issuing of license plates or place cards; removing certain persons from eligibility for placards and plates; amending and adding definitions; limiting the ability of certain organizations from parking in designated spaces; requiring certain markings in designated parking areas; increasing the fine for first offense parking violation; and removing certain rule-making requirements.

Be it enacted by the Legislature of West Virginia:

That §17C-13-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 13. STOPPING, STANDING AND PARKING.

§17C-13-6. Stopping, standing or parking privileges for persons with a mobility impairment; definitions; qualification; special registration plates and removable windshield placards; expiration; application; violation; penalties.
(a) (1) The commissioner may issue up to two special registration plates or removable windshield placards to a person with a mobility impairment or a West Virginia organization which transports persons with disabilities and facilitates the mobility of its customers, patients, students or persons otherwise placed under its responsibility.

(2) Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of article three, chapter seventeen-a of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by any physician, chiropractor, advanced nurse practitioner or physician’s assistant who is licensed in this state, stating that the applicant has a mobility impairment or that the applicant is an organization which regularly transports a person with a mobility impairment as defined in this section. The physician, chiropractor, advanced nurse practitioner or physician’s assistant shall specify in the certificate whether the disability is temporary or permanent. A disability which is temporary shall not exceed six months. A disability which is permanent is one which is one to five years or more in expected duration.

(5) Upon receipt of the completed application, the physician's certificate and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for
permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(6) Organization which transport people with disabilities will be provided with a placard which will permit them to park in a designate area for the length of time necessary to load and unload passengers. These vehicles must be moved to a nondesignated space once the loading or unloading process is complete.

(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath or osteopath, chiropractor, advanced nurse practitioner or physician's assistant licensed to practice in West Virginia:

(A) Cannot walk two hundred feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one
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67 second, when measured by spirometry, is less than one liter
68 or the arterial oxygen tension is less than sixty mm/hg on
69 room air at rest;

70 (D) Uses portable oxygen;

71 (E) Has a cardiac condition to such an extent that the
72 person's functional limitations are classified in severity as
73 Class III or Class IV according to standards established by
74 the American Heart Association; or

75 (F) Is severely limited in his or her ability to walk
76 because of an arthritic, neurological or other orthopedic
77 condition;

78 (2) "Special registration plate" means a registration plate
79 that displays the international symbol of access, as adopted
80 by the Rehabilitation International Organization in nineteen
81 hundred sixty-nine at its Eleventh World Congress on
82 Rehabilitation of the Disabled, in a color that contrasts with
83 the background, in letters and numbers the same size as those
84 on the plate, and which may be used in lieu of a regular
85 registration plate;

86 (3) "Removable windshield placard" (permanent or
87 temporary) means a two-sided, hanger-style placard
88 measuring three inches by nine and one-half inches, with all
89 of the following on each side:

90 (A) The international symbol of access, measuring at
91 least three inches in height, centered on the placard, in white
92 on a blue background for permanent designations and in
93 white on a red background for temporary designations;

94 (B) An identification number measuring one inch in
95 height;
96  (C) An expiration date in numbers measuring one inch in
97  height; and

98  (D) The seal or other identifying symbol of the issuing
99  authority;

100  (4) "Regular registration fee" means the standard
101  registration fee for a vehicle of the same class as the
102  applicant's vehicle;

103  (5) "Public entity" means state or local government or
104  any department, agency, special purpose district or other
105  instrumentality of a state or local government;

106  (6) "Public facility" means all or any part of any
107  buildings, structures, sites, complexes, roads, parking lots or
108  other real or personal property, including the site where the
109  facility is located;

110  (7) "Place or places of public accommodation" means a
111  facility or facilities operated by a private entity whose
112  operations affect commerce and fall within at least one of the
113  following categories:

114  (A) Inns, hotels, motels and other places of lodging;

115  (B) Restaurants, bars or other establishments serving
116  food or drink;

117  (C) Motion picture houses, theaters, concert halls,
118  stadiums or other places of exhibition or entertainment;

119  (D) Auditoriums, convention centers, lecture halls or
120  other places of public gatherings;

121  (E) Bakeries, grocery stores, clothing stores, hardware
122  stores, shopping centers or other sales or rental
123  establishments;
(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals or other service establishments;

(G) Terminals, depots or other stations used for public transportation;

(H) Museums, libraries, galleries or other places of public display or collection;

(I) Parks, zoos, amusement parks or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses or other places of exercise or recreation;

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the Americans with Disabilities Act (ADA).

(10) “Parking enforcement personnel” includes any law-enforcement officer as defined by section one, article twenty-nine, chapter thirty of this code, and private security guards, parking personnel and other personnel authorized by a city, county or the state to issue parking citations.
Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars. Any person who fabricates, uses or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars per placard fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined seven hundred dollars per identification card fabricated, used or sold. Any person who fabricates, uses or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined seven hundred dollars. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he, she or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and...
year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner or physician’s assistant, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every twelve or twenty-four inches apart along with the words “no parking” in painted letters which are at least twelve inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying
the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle from any other state, United States territory or foreign country displaying an officially issued special registration plate, placard or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard or decal is mounted or displayed on the vehicle.

(h) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county and municipal buildings and facilities, places of public accommodation and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment at all times.

(i) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: Provided, That this privilege does not mean that the vehicle may park in any zone where stopping, standing or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.
The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined two hundred dollars; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars.

(j) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand or park a motor vehicle in an area designated, zoned or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined two hundred dollars; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars.
(k) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to $500 fine".

(l) No person may stop, stand or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined two hundred dollars; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined three hundred dollars; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined five hundred dollars.

(m) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(n) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time and location of the illegally parked vehicle. The photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may
issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned or designated accessible parking areas by the supervising law-enforcement agency.

(o) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (n) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' general revenue fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(p) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(q) The commissioner shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.
AN ACT to repeal §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended; and to amend and reenact §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code, all relating to the West Virginia Performance Review Act; updating legislative findings and definitions; continuing the Joint Committee on Government Operations; updating powers and duties of the Joint Committee on Government Operations and the Joint Committee on Government Organization; requiring department presentations; establishing a new agency review procedure and schedule; establishing a new regulatory board review procedure and schedule; authorizing compliance reviews; clarifying termination procedures; and providing that agencies and boards do not terminate pursuant to prior enactments.

Be it enacted by the Legislature of West Virginia:

That §4-10-4a, §4-10-5a, §4-10-5b, §4-10-6a, §4-10-10a and §4-10-11a of the Code of West Virginia, 1931, as amended, be repealed; and that §4-10-1, §4-10-2, §4-10-3, §4-10-4, §4-10-5, §4-10-6, §4-10-7, §4-10-8, §4-10-9, §4-10-10, §4-10-11, §4-10-12, §4-10-13 and §4-10-14 of said code be amended and reenacted, all to read as follows:
ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-1. Short title.
This article shall be known as and may be cited as the West Virginia Performance Review Act.

§4-10-2. Legislative findings; performance review process authorized.
1 (a) The Legislature finds that:
2 (1) State government has created many state agencies
3 without sufficient legislative oversight, regulatory
4 accountability or an effective system of checks and balances;
5 (2) State agencies have been created without
6 demonstrable evidence that their benefits to the public clearly
7 justify their creation;
8 (3) Once established, state agencies tend to acquire
9 permanent status, often without regard for the condition that
10 gave rise to their establishment;
(4) State agencies have been allowed to establish rules and at times may acquire autonomy and authority inconsistent with principles of accountability;

(5) Employees of state agencies are often beyond the effective control of elected officials and efforts to encourage modernization or to review performance become difficult;

(6) Regulatory boards established pursuant to chapter thirty of this code need periodic review to ascertain the need for their continuation; and

(7) By establishing a process for the objective review of state agencies and regulatory boards, their programs, functions and activities, the Legislature may evaluate the need for their continued existence, consolidation or termination and improve government efficiency, effectiveness and accountability.

(b) The Legislature hereby authorizes a process to review the operation and performance of state agencies and regulatory boards to determine the need for their continued existence, consolidation or termination.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

(a) “Agency” or “state agency” means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution,
survey, position, coalition or other entity in the State of West Virginia.

(b) “Agency review” means a review performed on agencies of a department pursuant to the provisions of this article.

(c) “Committee” means the Joint Committee on Government Operations.

(d) “Compliance review” means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the Legislative Auditor, the committee or the joint standing committee.

(e) “Department” means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

(f) “Department presentation” means a presentation by a department pursuant to the provisions of this article.

(g) “Division” means the Performance Evaluation and Research Division of the Legislative Auditor.

(h) “Joint standing committee” means the Joint Standing Committee on Government Organization.

(i) “Privatize” means a contract to procure the services of a private vendor to provide a service that is similar to, and/or in lieu of, a service provided by a state agency.
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34 (j) “Regulatory Board” means a board that regulates professions and occupations, created under the provisions of chapter thirty of this code.

37 (k) “Regulatory Board Review” means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-4. Joint Committee on Government Operations.

1 (a) The Joint Committee on Government Operations created by prior enactment of this article is hereby continued.

3 (b) The committee is composed of fifteen members as follows:

5 (1) Five members of the Senate, to be appointed by the President, with no more than three being from the same political party;

8 (2) Five members of the House of Delegates, to be appointed by the Speaker, with no more than three being from the same political party; and

11 (3) Five citizen members from this state who are not legislators, public officials or public employees, to be appointed by the Speaker of the House and the President of the Senate, with no more than three being from the same political party and at least one of whom shall reside in each congressional district of this state.

17 (c) The committee has two cochairs, one selected by the President of the Senate from the members appointed from the Senate and one selected by the Speaker of the House of Delegates from the members appointed from the House of Delegates.

22 (d) All members of the committee serve until their successors have been appointed.
(e) All members of the committee are entitled to compensation and reimbursement for expenses as authorized for members of the Legislature in accordance with the performance of their interim duties.

§4-10-5. Powers and duties of the committee and joint standing committee.

(a) To carry out the duties set forth in this article, the committee or the joint standing committee, any authorized employee of the committee, the joint standing committee, the Legislative Auditor or any employee of the division working at the direction of the committee or the joint standing committee, shall have access, including copying, to all records of every state agency in West Virginia.

(b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.

(c) The committee or the joint standing committee may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee or the joint standing committee may administer oaths to persons testifying at such hearings or meetings.

(d) The committee or the joint standing committee may issue a subpoena, with the signature of either cochair of the committee or the joint standing committee and served in the manner provided by law, to summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee or joint standing committee in the performance of its duties.

(e) If any witness subpoenaed to appear at any hearing or meeting refuses or fails to appear or to answer questions put to him or her, or refuses or fails to produce books, papers, documents or records within his or her control when the same
are demanded, the committee or the joint standing committee, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in article one of this chapter, or may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court shall compel obedience to the subpoena as though it had been issued by the court.

(f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury.

(g) The committee or the joint standing committee, subject to the approval of the Joint Committee on Government and Finance, may employ such persons as it considers necessary to carry out the duties and responsibilities under this article and may contract for outside expertise in conducting reviews.

(h) The committee or the joint standing committee may collect, and the agency or regulatory board shall promptly pay, the costs associated with conducting the reviews performed under this article, upon presentation of a statement for the costs incurred. All money received by the committee or the joint standing committee from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

§4-10-6. Department presentation and schedule.

(a) During the two thousand seven legislative interim period, each department shall make a presentation pursuant to the provisions of this section to the joint standing committee and the committee.

(b) The department shall provide to the joint standing committee and the committee a written copy of the presentation. The presentation shall include:
(1) A departmental chart designating each agency under the purview of the department;

(2) An analysis of the department’s internal performance measures and self-assessment systems; and

(3) For each agency under the purview of the department, the following:

(A) The mission, goals and functions of the agency;

(B) The statutory or other legal authority under which the agency operates;

(C) The number of employees of the agency for the immediate past ten years;

(D) The budget for the agency for the immediate past ten years;

(E) Any potential or actual loss of revenue due to operations, changes in law or any other reason;

(F) The extent to which the agency has operated in the public interest;

(G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;

(H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy and availability of services that it has provided;

(I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;
(J) The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and

(K) A recommendation as to whether the agency should be continued, consolidated or terminated.

(c) The schedule for the presentations by the departments shall be as follows:

(1) May, two thousand seven, Department of Administration;

(2) June, two thousand seven, Department of Education and the Arts;

(3) July, two thousand seven, Department of Education, including the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education;

(4) August, two thousand seven, Department of Revenue;

(5) September, two thousand seven, Department of Environmental Protection;

(6) October, two thousand seven, Department of Health and Human Resources, including the Bureau of Senior Services;

(7) November, two thousand seven, Department of Commerce;

(8) December, two thousand seven, Department of Military Affairs and Public Safety; and

(9) January, two thousand eight, Department of Transportation.
§4-10-7. Agency review.

1. (a) The committee and the joint standing committee shall conduct agency reviews, or authorize the division to conduct agency reviews as one of its duties in addition to its other duties prescribed by law, in accordance with generally accepted government auditing standards (GAGAS) as promulgated by the U. S. Government Accountability Office, on one or more of the agencies under the purview of a department, during the year in which the department is scheduled for review under the provisions of this article.

2. (b) The agency review may include, but is not limited to:

   (1) An identification and description of the agency under review;

   (2) The number of employees of the agency for the immediate past ten years;

   (3) The budget for the agency for the immediate past ten years;

   (4) Whether the agency is effectively and efficiently carrying out its statutory duties or legal authority;

   (5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;

   (6) A cost-benefit analysis, as described in subsection (e) of this section, on state services that are privatized or contemplated to be privatized;

   (7) An analysis of the extent to which agency websites are accurate, updated and user friendly;

   (8) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;
§4-10-8. Schedule of departments for agency review.

(a) Each department shall make a presentation pursuant to the provisions of this article, to the joint standing committee and the committee during the first interim meeting after the regular session of the year in which the department
is to be reviewed pursuant to the schedule set forth in subsection (b) of this section.

(b) An agency review shall be performed on one or more agencies under the purview of each department at least once every six years, commencing as follows:

1. Two thousand eight, the Department of Administration;
2. Two thousand nine, the Department of Education and the Arts, and the Department of Education, including the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education;
3. Two thousand ten, the Department of Revenue and the Department of Commerce;
4. Two thousand eleven, the Department of Environmental Protection and the Department of Military Affairs and Public Safety;
5. Two thousand twelve, the Department of Health and Human Resources, including the Bureau of Senior Services; and
6. Two thousand thirteen, the Department of Transportation.

§4-10-9. Regulatory board review.

(a) The committee and the joint standing committee shall conduct regulatory board reviews, or authorize the division to conduct regulatory board reviews as one of its duties in addition to its other duties prescribed by law, in accordance with generally accepted government auditing standards (GAGAS) as promulgated by the U. S. Government Accountability Office, on each regulatory board to ascertain if there is a need for the continuation, consolidation or termination of the regulatory board.
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(b) A regulatory board review shall be performed on each regulatory board at least once every twelve years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within twelve years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased, decreased or the same degree of regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee or the joint standing committee may direct; and

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated or terminated.
(e) The committee or the joint standing committee may vote on the recommendation as to whether the regulatory board under review should be continued, consolidated or terminated. Recommendations of the committee or the joint standing committee shall be given considerable weight in determining if an regulatory board should be continued, consolidated or terminated.

§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every twelve years, commencing as follows:

(1) Two thousand eight: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.

(2) Two thousand nine: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.

(3) Two thousand ten: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

(4) Two thousand eleven: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.

(5) Two thousand twelve: Board of Occupational Therapy; Board of Examiners for Speech-Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.
(6) Two thousand thirteen: Board of Professional Surveyors; Board of Registration for Foresters; and Board of Registration for Professional Engineers.

(7) Two thousand fourteen: Board of Examiners for Licensed Practical Nurses; Board of Examiners for Registered Professional Nurses; and Massage Therapy Licensure Board.

(8) Two thousand fifteen: Board of Architects; Board of Embalmers and Funeral Directors; and Board of Landscape Architects.

(9) Two thousand sixteen: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and Certification Board; and Real Estate Commission.

(10) Two thousand seventeen: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of Social Work Examiners.

(11) Two thousand eighteen: Board of Examiners of Psychologists; Board of Optometry; and Board of Veterinary Medicine.

§4-10-11. Compliance review.

(a) After an agency review or a regulatory board review, if the committee or the joint standing committee finds that an agency or a regulatory board needs further review, then the committee or the joint standing committee may request a compliance review.

(b) If the committee or the joint standing committee requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its expected completion date.
§4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.

(a) If the Legislature terminates an agency or regulatory board, then the agency or regulatory board shall continue in existence until the first day of July of the next succeeding year for the purpose of winding up its affairs. Upon the expiration of one year after termination, the agency or regulatory board shall cease all activities.

(b) During the wind-up year, the impending termination may not reduce nor otherwise limit the powers or authority of that terminated agency or regulatory board.

(c) An agency that has been terminated pursuant to the provisions of this article may be reestablished by the Legislature. If the agency is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the agency is considered continued.

(d) If a regulatory board is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the regulatory board is considered continued. If a regulatory board is not reestablished by the Legislature during the wind-up year, then the regulatory board is considered terminated and the profession or occupation must apply for regulation through the sunrise process, under the provisions of this code, to be reestablished.
§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

(a) On or before the thirtieth day of June of the wind-up year, the terminated agency or regulatory board shall file a written statement with the Secretary of the Department of Administration and the division describing the disposition of its funds, assets, equipment and records.

(b) The division shall review the statement of the terminated agency or regulatory board and report the results of its review to the committee and the joint standing committee.

(c) Any unexpended funds of the terminated agency or regulatory board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.

(d) All remaining assets and equipment of a terminated agency or regulatory board shall be transferred to the secretary of the department of which it was a part or to the state agency for surplus property in the Department of Administration.

(e) The records of a terminated agency or regulatory board shall be deposited with the Department of Administration.

§4-10-14. Nullifying agency and regulatory board termination under prior law.

No agency or regulatory board terminates pursuant to references to this article.
AN ACT to amend and reenact §29-6-7 of the Code of West Virginia, 1931, as amended, relating to expanding the powers and duties of the Director of Personnel to allow monetary incentives in programs developed to improve the efficiency and effectiveness of public service.

Be it enacted by the Legislature of West Virginia:

That §29-6-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7. Director of personnel; appointment; qualifications; powers and duties.

1 (a) The Secretary of the Department of Administration shall appoint the director. The director shall be a person knowledgeable of the application of the merit principles in public employment as evidenced by the obtainment of a degree in business administration, personnel administration, public administration or the equivalent and at least five years of administrative experience in personnel administration.

8 (b) The director shall:
(1) Consistent with the provisions of this article, administer the operations of the division, allocating the functions and activities of the division among sections as the director may establish;

(2) Maintain a personnel management information system necessary to carry out the provisions of this article;

(3) Supervise payrolls and audit payrolls, reports or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer and implement personnel programs and policies in state government and to political subdivisions after agreement by the parties;

(5) Supervise the employee selection process and employ performance evaluation procedures;

(6) Develop programs to improve efficiency and effectiveness of the public service, including, but not limited to, employee training, development, assistance and incentives, which, notwithstanding any provision of this code to the contrary, may include a one-time monetary incentive for recruitment and retention of employees in critically understaffed classifications. The director, in consultation with the board, shall determine which classifications are critically understaffed. The one-time monetary incentive program shall continue until the thirtieth day of June, two thousand nine. The director shall report annually on or before the thirty-first day of December, commencing in the year two thousand seven, to the Joint Committee on Government and Finance. The annual report shall provide all relevant information on the one-time monetary incentive
(7) Establish pilot programs and other projects for a maximum of one year outside of the provisions of this article, subject to approval by the board, to be included in the annual report;

(8) Establish and provide for a public employee interchange program and may provide for a voluntary employee interchange program between public and private sector employees;

(9) Establish an internship program;

(10) Assist the Governor and Secretary of the Department of Administration in general workforce planning and other personnel matters;

(11) Make an annual report to the Governor and Legislature and all other special or periodic reports as may be required;

(12) Assess cost for special or other services;

(13) Recommend rules to the board for implementation of this article; and

(14) Conduct schools, seminars or classes for supervisory employees of the state regarding handling of complaints and disciplinary matters and the operation of the state personnel system.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-6-7a, relating to Division of Personnel; and requiring the director to report on a centralized personnel system.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-6-7a, to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7a. Report on a centralized personnel system.

1. Before the thirtieth day of September, two thousand seven, the director of the Division of Personnel shall report to the Joint Committee on Government Organization on the following:

   (1) A centralized personnel/human relations system for the state;
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7 (2) The benefits, cost effect and drawbacks of a centralized system;

9 (3) The structure for the system, including a recommendation on the number of satellite offices; and

11 (4) Any other recommendations the director finds beneficial to satisfy the personnel/human relations needs of the state.

CHAPTER 203

(Com. Sub. for H.B. 2527 - By Delegates Hatfield, lquainta, Miley, Swartzmiller, Talbott, Yost, Schoen and Walters)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to repeal §30-1A-2a of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of said code, all relating to sunrise law; requiring applications for substantial revision or expansion of the scope of practice of regulated professions and occupations; modifying the criteria to be considered in the decision to regulate a profession or occupation; requiring certain findings in the sunrise report; requiring re-application if the Joint Standing Committee on Government Organization does not approve the application; and requiring that weight be given to the recommendations of the Joint Standing Committee on Government Organization.

Be it enacted by the Legislature of West Virginia:

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That §30-1A-2a of the Code of West Virginia, 1931, as amended, be repealed; and that §30-1A-2, §30-1A-3, §30-1A-5 and §30-1A-6 of said code be amended and reenacted, 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; application and reporting dates.

§30-1A-3. Analysis and evaluation of application.

§30-1A-5. Reapplication requirements.

§30-1A-6. Article construction.

§30-1A-2. Required application for regulation of professional or occupational group; application and reporting dates.

(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 or organization, or who proposes to substantially revise or expand the scope of practice of a regulated profession or occupation, shall submit an application to the Joint Standing Committee on Government Organization, as set out in this article.

(b) The Joint Standing Committee on Government Organization may only accept an application for regulation of a professional or occupational group or organization, or substantial revision or expansion of the scope of practice of a regulated profession or occupation, 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
(c) The completed application shall contain:

(1) A description of the occupational or professional group or organization for which regulation is proposed, or for which a substantial revision or expansion of the scope of practice of a regulated profession or occupation is proposed, 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 or a substantial revision or expansion of the scope of practice is 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 proposed funding mechanism to pay the administrative costs of the regulation or the substantial revision or expansion of the scope of practice, or of the fee structure conforming with the statutory requirements of financial autonomy as set out in this chapter;

(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 this chapter;
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44 (6) The benefit to the public that would result from the
45 proposed regulation or substantial revision or expansion of
46 the scope of practice; and

47 (7) The cost of the proposed regulation or substantial
48 revision or expansion of the scope of practice.

§30-1A-3. Analysis and evaluation of application.

1 (a) The Joint Committee on Government Organization
2 shall refer the completed application of the professional or
3 occupational group or organization to the Performance
4 Evaluation and Research Division of the Office of the
5 Legislative Auditor.

6 (b) The Performance Evaluation and Research Division
7 of the Office of the Legislative Auditor shall conduct an
8 analysis and evaluation of the application. The analysis and
9 evaluation shall be based upon the criteria listed in subsection
10 (c) of this section. The Performance Evaluation and
11 Research Division of the Office of the Legislative Auditor
12 shall submit a report, and such supporting materials as may
13 be required, to the Joint Standing Committee on Government
14 Organization, as set out in this section.

15 (c) For an application proposing the regulation of an
16 unregulated professional or occupational group or
17 organization, the report shall include evaluation, analysis and
18 findings as to:

19 (1) Whether the unregulated practice of the occupation or
20 profession clearly harms or endangers the health, safety or
21 welfare of the public, and whether the potential for the harm
22 is easily recognizable and not remote or dependent upon
23 tenuous argument;
(2) Whether the practice of the profession or occupation requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational competence;

(3) Whether the public can be adequately protected by other means in a more cost-effective manner; and

(4) Whether the professional or occupational group or organization should be regulated as proposed in the application.

(d) For an application proposing the substantial revision or expansion of the scope of practice of a regulated profession or occupation, the report shall include the evaluation, analysis and findings as set forth in subsection (c) of this section inasmuch as applicable, and a clear recommendation as to whether the scope of practice should be substantially revised or expanded as proposed in the application.

(e) For an application 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.

(f) For an application 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.

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§30-1A-5. Reapplication requirements.

(a) If the Joint Standing Committee on Government Organization approves an application for regulation of a professional or occupational group or organization, but the legislation incorporating its recommendations does not become law in the year in which it is first introduced, the applicants for regulation may introduce legislation during each of the two successive regular sessions without having to make reapplication.

(b) If the Joint Standing Committee on Government Organization does not approve an application for regulation, revision or expansion of the scope of practice of a professional or occupational group or organization, any party who continues to propose the regulation, revision or expansion must reapply in accordance with the provisions of this article.

§30-1A-6. Article construction.

(a) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce or of the Legislature to consider any bill that would create a new state governmental department or agency or amend the law with respect to an existing one.

(b) Notwithstanding the provisions of subsection (a) of this section, the recommendations of the Joint Standing Committee on Government Organization are to be given considerable weight in determining if a profession or occupation should be regulated, or if the scope of practice of a regulated profession or occupation should be revised or expanded.
AN ACT to amend and reenact §30-3-9, §30-3-12 and §30-3-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §30-3D-1, §30-3D-2 and §30-3D-3; and to amend said code by adding thereto a new section, designated §30-14-11a, all relating to authorizing the West Virginia Board of Medicine and the West Virginia Board of Osteopathy; designating programs in which physicians, podiatrists and physician assistants may be monitored while they pursue treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary action if the person complies with the goals and restrictions of the program; and requiring licenses for physicians, podiatrists and physician assistants to expire rather than being suspended if required continuing education is not documented.

Be it enacted by the Legislature of West Virginia:

That §30-3-9, §30-3-12 and 30-3-16 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 §30-3D-1, §30-3D-2 and §30-3D-3, and that said code be amended by adding thereto a new section, designated §30-14-11a, all to read as follows:

Article
3D. Physician Health Programs.
§30-3-9. Records of board; expungement; examination; notice; public information voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

§30-3-16. Physician assistants; definitions; Board of Medicine rules; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

§30-3-9. Records of board; expungement; examination; notice; public information voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

(a) The board shall maintain a permanent record of the names of all physicians, podiatrists, and physician assistants, licensed, certified or otherwise lawfully practicing in this state and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board under this article or otherwise. Such record may include, in accordance with rules established by the board, additional items relating to the individual's record of professional practice that will facilitate proper review of such individual's professional competence.

(b) Upon a determination by the board that any report submitted to it is without merit, the report shall be expunged from the individual's historical record.

(c) A physician, podiatrist, physician assistant or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual historical
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record maintained by the board pursuant to this article and to place into such record a statement of reasonable length of his or her own view of the correctness or relevance of any information existing in such record. Such statement shall at all times accompany that part of the record in contention.

(d) A physician, podiatrist, physician assistant or applicant has the right to seek through court action the amendment or expungement of any part of his or her historical record.

(e) A physician, podiatrist, physician assistant or applicant shall be provided written notice within thirty days of the placement and substance of any information in his or her individual historical record that pertains to him or her and that was not submitted to the board by him or her.

(f) Except for information relating to biographical background, education, professional training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section and which has been disclosed to the board, prior disciplinary action by any entity, or information contained on the licensure application, the board shall expunge information in an individual's historical record unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the historical record.

(g) Orders of the board relating to disciplinary action against a physician, podiatrist or physician assistant are public information.

(h) (1) In order to encourage voluntary participation in monitored alcohol chemical dependency or major mental illness programs and in recognition of the fact that major
mental illness, alcoholism and chemical dependency are illnesses, a physician, podiatrist or physician assistant licensed, certified or otherwise lawfully practicing in this state or applying for a license to practice in this state may enter into a voluntary agreement with the physician health program as defined in section two, article three-d of this chapter. The agreement between the physician, podiatrist or physician assistant and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(2) Any voluntary agreement entered into pursuant to this subsection shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

(A) Such voluntary agreement is the result of the physician, podiatrist or physician assistant self-enrolling or voluntarily participating in the board-designated physician health program;

(B) The board has not received nor filed any written complaints regarding said physician, podiatrist or physician assistant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients, nor received any reports pursuant to subsection (b), section fourteen of this article relating to an alcohol or chemical dependency impairment; and

(C) The physician, podiatrist or physician assistant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.
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(3) If any physician, podiatrist or physician assistant enters into a voluntary agreement with the board-approved physician health program, pursuant to this subsection and then fails to comply with or fulfill the terms of said agreement, the physician health program shall report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to subsection (a), section fourteen of this article or may permit continued participation in the physician health program or both.

(4) If the board has not instituted any disciplinary proceeding as provided for in this article, any information received, maintained or developed by the board relating to the alcohol or chemical dependency impairment of any physician, podiatrist or physician assistant and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

In the board's annual report of its activities to the Legislature required under section seven of this article, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report, the board shall not disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.

Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any
voluntary agreement entered into pursuant to this subsection to licensing boards in other jurisdictions of which the board has become aware and may be appropriate.

(i) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years.

(b) The license shall be renewed:

(1) Upon receipt of a reasonable fee, as set by the board;

(2) Submission of an application on forms provided by the board; and

(3) A certification of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period.
(c) The application may not require disclosure of a voluntary agreement entered into pursuant to subsection (h), section nine of this article.

(d) Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and alternate categories approved by the board.

(e) Continuing podiatric education satisfactory to the board is continuing podiatric education approved by the Council on Podiatric Education and alternate categories approved by the board.

(f) Notwithstanding any provision of this chapter to the contrary, beginning the first day of July, two thousand seven, failure to timely submit to the board a certification of successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall result in the automatic expiration of any license to practice medicine and surgery or podiatry until such time as the certification, with all supporting written documentation, is submitted to and approved by the board.

(g) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:

(1) Provide certification with supporting written documentation of the successful completion of the required continuing education;

(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.
If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within thirty days of receipt of a written request to do so by the board. If a licensee fails or refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.

The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practicing, medicine and surgery or podiatry in this state. A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state.

An inactive license may be converted by the board to an active license upon a written request by the licensee to the board that:

(1) Accounts for his or her period of inactivity to the satisfaction of the board; and
74 (2) Submits written documentation of participation in and
75 successful completion of a minimum of fifty hours of
76 continuing medical or podiatric education satisfactory to the
77 board, as appropriate to the particular license, during each
78 preceding two-year period.

79 (l) An inactive license may be obtained upon receipt of a
80 reasonable fee, as set by the board, and submission of an
81 application on forms provided by the board on a biennial
82 basis.

83 (m) The board may not require any physician or
84 podiatrist who is retired or retiring from the active practice of
85 medicine and surgery or the practice of podiatry and who is
86 voluntarily surrendering their license to return to the board
87 the license certificate issued to them by the board.

§30-3-16. Physician assistants; definitions; Board of Medicine
rules; annual report; licensure; temporary
license; relicensure; job description required;
revocation or suspension of licensure;
responsibilities of supervising physician; legal
responsibility for physician assistants; reporting
by health care facilities; identification;
limitations on employment and duties; fees;
continuing education; unlawful representation of
physician assistant as a physician; criminal
penalties.

1 (a) As used in this section:

2 (1) "Approved program" means an educational program
3 for physician assistants approved and accredited by the
4 committee on allied health education and accreditation on
5 behalf of the American Medical Association or its successor;
(2) "Health care facility" means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic or physician's office;

(3) "Physician assistant" means an assistant to a physician who is a graduate of an approved program of instruction in primary health care or surgery, has attained a baccalaureate or master's degree, has passed the national certification examination and is qualified to perform direct patient care services under the supervision of a physician;

(4) "Physician assistant-midwife" means a physician assistant who meets all qualifications set forth under subdivision (3) of this subsection and fulfills the requirements set forth in subsection (d) of this section, is subject to all provisions of this section and assists in the management and care of a woman and her infant during the prenatal, delivery and postnatal periods; and

(5) "Supervising physician" means a doctor or doctors of medicine or podiatry permanently licensed in this state who assume legal and supervisory responsibility for the work or training of any physician assistant under his or her supervision.

(b) The board shall promulgate rules pursuant to the provisions of article three, chapter twenty-nine-a of this code governing the extent to which physician assistants may function in this state. The rules shall provide that the 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 a physician permanently licensed in this state, but that supervision and control does not require the personal presence of the supervising physician at the place or places where services are rendered if the physician assistant's normal place of employment is on the premises of the
proceed under his or her direction, but a separate place of work for the 
physician assistant may not be established. In promulgating 
the rules, the board shall allow the physician assistant to 
perform those procedures and examinations and in the case 
of certain authorized physician assistants to prescribe at the 
direction of his or her supervising physician in accordance 
with subsection (n) of this section those categories of drugs 
submitted to it in the job description required by this section. 
Certain authorized physician assistants may pronounce death 
in accordance with the rules proposed by the board which 
receive legislative approval. The board shall compile and 
publish an annual report that includes a list of currently 
licensed physician assistants and their employers and location 
in the state.

(c) The board shall license as a physician assistant any 
person who files an application together with a proposed job 
description and furnishes satisfactory evidence to it that he or 
she has met the following standards:

(1) Is a graduate of an approved program of instruction in 
primary health care or surgery;

(2) Has passed the certifying examination for a primary 
care physician assistant administered by the national 
commission on certification of physician assistants and has 
maintained certification by that commission so as to be 
currently certified;

(3) Is of good moral character; and

(4) Has attained a baccalaureate or master's degree.

(d) The board shall license as a physician assistant-
midwife any person who meets the standards set forth under
subsection (d) of this section and, in addition thereto, the following standards:

(1) Is a graduate of a school of midwifery accredited by the American college of nurse-midwives;

(2) Has passed an examination approved by the board; and

(3) Practices midwifery under the supervision of a board-certified obstetrician, gynecologist or a board-certified family practice physician who routinely practices obstetrics.

(e) The board may license as a physician assistant any person who files an application together with a proposed job description and furnishes satisfactory evidence that he or she is of good moral character and meets either of the following standards:

(1) He or she is a graduate of an approved program of instruction in primary health care or surgery prior to the first day of July, one thousand nine hundred ninety-four, and has passed the certifying examination for a physician assistant administered by the national commission on certification of physician assistants and has maintained certification by that commission so as to be currently certified; or

(2) He or she had been certified by the board as a physician assistant then classified as "Type B" prior to the first day of July, one thousand nine hundred eighty-three.

(f) Licensure of an assistant to a physician practicing the specialty of ophthalmology is permitted under this section: Provided, That a physician assistant may not dispense a prescription for a refraction.

(g) When any graduate of an approved program submits an application to the board for a physician assistant license,
accompanying a job description as referenced by this section, the board shall issue to that applicant a temporary license allowing that applicant to function as a physician assistant until the applicant successfully passes the national commission on certification of physician assistants' certifying examination: 

Provided, That the applicant shall sit for and obtain a passing score on the examination next offered following graduation from the approved program. No applicant shall receive a temporary license who, following graduation from an approved program, has sat for and not obtained a passing score on the examination. A physician assistant who has not been certified by the National Board of Medical Examiners on behalf of the national commission on certification of physician assistants will be restricted to work under the direct supervision of the supervising physician.

(h) A physician assistant who has been issued a temporary license shall, within thirty days of receipt of written notice from the national commission on certification of physician assistants of his or her performance on the certifying examination, notify the board in writing of his or her results. In the event of failure of that examination, the temporary license shall expire and terminate automatically and the board shall so notify the physician assistant in writing.

(i) Any physician applying to the board to supervise a physician assistant shall affirm that the range of medical services set forth in the physician assistant’s job description are consistent with the skills and training of the supervising physician and the physician assistant. Before a physician assistant can be employed or otherwise use his or her skills, the supervising physician and the physician assistant must obtain approval of the job description from the board. The board may revoke or suspend any license of an assistant to a physician for cause, after giving that assistant an opportunity to be heard in the manner provided by article five, chapter.
(j) The supervising physician is responsible for observing, directing and evaluating the work, records and practices of each physician assistant performing under his or her supervision. He or she shall notify the board in writing of any termination of his or her supervisory relationship with a physician assistant within ten days of the termination. The legal responsibility for any physician assistant remains with the supervising physician at all times, including occasions when the assistant under his or her direction and supervision, aids in the care and treatment of a patient in a health care facility. In his or her absence, a 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 the physician assistant unless the physician assistant is an employee of the facility.

(k) The acts or omissions of a physician assistant employed by health care facilities providing inpatient or outpatient services shall be the legal responsibility of the facilities. Physician assistants employed by facilities in staff positions shall be supervised by a permanently licensed physician.

(l) 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 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 the action. The health care facility shall also report any other formal disciplinary action taken against any 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.

(m) When functioning as a physician assistant, the
physician assistant shall wear a name tag that identifies him
or her as a physician assistant. A two and one-half by three
and one-half inch card of identification shall be furnished by
the board upon licensure of the physician assistant.

(n) A physician assistant 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
pursuant to the provisions of article three, chapter twenty-
nine-a of this code governing the eligibility and extent to
which a physician assistant may prescribe at the direction of
the supervising physician. The rules shall include, but not be
limited to, the following:

(1) Provisions for approving a state formulary classifying
pharmacologic categories of drugs that may be prescribed by
a physician assistant:

(A) The following categories of drugs shall be excluded
from the formulary: Schedules I and II of the Uniform
Controlled Substances Act, anticoagulants, antineoplastic,
radiopharmaceuticals, general anesthetics and radiographic
contrast materials;

(B) Drugs listed under Schedule III shall be limited to a
72-hour supply without refill; and

(C) Categories of other drugs may be excluded as
determined by the board.
(2) All pharmacological categories of drugs to be prescribed by a physician assistant shall be listed in each job description submitted to the board as required in subsection (i) of this section;

(3) The maximum dosage a physician assistant may prescribe;

(4) A requirement that to be eligible for prescription privileges, a physician assistant shall have performed patient care services for a minimum of two years immediately preceding the submission to the board of the job description containing prescription privileges and shall have successfully completed an accredited course of instruction in clinical pharmacology approved by the board; and

(5) A requirement that to maintain prescription privileges, a physician assistant shall continue to maintain national certification as a physician assistant and, in meeting the 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 a physician assistant to independently prescribe or dispense drugs.

(o) A supervising physician may not supervise at any one time more than three full-time physician assistants or their equivalent, except that a physician may supervise up to four hospital-employed physician assistants. No physician shall supervise more than four physician assistants at any one time.

(p) A physician assistant may not sign any prescription, except in the case of an authorized physician assistant at the direction of his or her supervising physician in accordance with the provisions of subsection (n) of this section. A physician assistant may not perform any service that his or her supervising physician is not qualified to perform. A physician assistant may 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.

(q) The provisions of this section do not authorize any physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists or pharmacists or certified as nurse anesthetists.

(r) Each application for licensure submitted by a licensed supervising physician under this section is to be accompanied by a fee of one hundred dollars. A fee of fifty dollars is to be charged for the biennial renewal of the license. A fee of twenty-five dollars is to be charged for any change of supervising physician.

(s) As a condition of renewal of physician assistant license, each physician assistant shall provide written documentation of participation in and successful completion during the preceding two-year period of continuing education, in the number of hours specified by the board by rule, designated as Category I by the American Medical Association, American Academy of Physician Assistants or the Academy of Family Physicians and continuing education, in the number of hours specified by the board by rule, designated as Category II by the association or either academy.

(t) Notwithstanding any provision of this chapter to the contrary, beginning the first day of July, two thousand seven, failure to timely submit the required written documentation shall result in the automatic expiration of any license as a physician assistant until the written documentation is submitted to and approved by the board.

(u) If a license is automatically expired and reinstatement is sought within one year of the automatic expiration, the former licensee shall:
(1) Provide certification with supporting written documentation of the successful completion of the required continuing education;

(2) Pay a renewal fee; and

(3) Pay a reinstatement fee equal to fifty percent of the renewal fee.

(v) If a license is automatically expired and more than one year has passed since the automatic expiration, the former licensee shall:

(1) Apply for a new license;

(2) Provide certification with supporting written documentation of the successful completion of the required continuing education; and

(3) Pay such fees as determined by the board.

(w) It is unlawful for any physician assistant to represent to any person that he or she is a physician, surgeon or podiatrist. 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.

(x) All physician assistants holding valid certificates issued by the board prior to the first day of July, one thousand nine hundred ninety-two, shall be considered to be licensed under this section.

ARTICLE 3D. PHYSICIAN HEALTH PROGRAMS.

§30-3D-1. Definitions.
§30-3D-2. Physician health program.
§30-3D-3. Discretionary authority of boards to designate programs.
§30-3D-1. Definitions.

For the purposes of this article, the following words and terms have the meanings ascribed to them, unless the context clearly indicates otherwise.

(1) “Boards” mean the West Virginia Board of Medicine and Board of Osteopathy.

(2) “Major mental illness” means a diagnosis of a mental disorder within the axis of psychotic or affective or mood, or alcohol or chemical abuse, or alcohol or chemical dependency, as stipulated in the International Code of Diagnosis.

(3) “Physician and physician assistant” mean those health care professionals licensed by the West Virginia Board of Medicine or the West Virginia Board of Osteopathy.

(4) “Podiatrist” means those individuals licensed by the West Virginia Board of Medicine to undertake the practice of podiatry.

(5) “Qualifying illness” means the diagnosis of alcohol or substance abuse or alcohol or substance dependency or major mental illness.

§30-3D-2. Physician health program.

(a) The boards are authorized to designate one or more physician health programs. To be eligible for designation by the boards, a physician health program shall:

(1) Agree to make their services available to all licensed West Virginia physicians, podiatrists and physicians’ assistants with a qualifying illness;

(2) Provide for the education of physicians, podiatrists and physicians’ assistants with respect to the recognition and treatment of alcohol, chemical dependency and mental illness and the availability of the physician health program for qualifying illnesses;
(3) Offer assistance to any person in referring a physician, podiatrist or physicians' assistant for purposes of assessment or treatment or both for a qualifying illness;

(4) Monitor the status of a physician, podiatrist or physicians' assistant who enters treatment for a qualifying illness pursuant to a written, voluntary agreement during treatment;

(5) Monitor the compliance of a physician, podiatrist or physicians' assistant who enters into a written, voluntary agreement for a qualifying illness with the physician health program setting forth a course for recovery;

(6) Agree to accept referrals from the boards to provide monitoring services pursuant to a board order; and

(7) Include such other requirements as the boards deem necessary.

(b) A designated physician health program shall:

(1) Set and collect reasonable fees, grants and donations for administration and services provided;

(2) Work collaboratively with the boards to develop model compliance agreements;

(3) Work collaboratively with the boards to identify qualified providers of services as may be needed by the individuals participating in the physician health program;

(4) Report to the boards no less than annually, statistics including the number of individuals served by license held; the number of compliant individuals; the number of individuals who have successfully completed their agreement period; and the number of individuals reported to a particular board for suspected noncompliance. Provided, That in making such report the physician health program shall not disclose any personally identifiable information relating to any physician, podiatrist or physician assistant participating in a voluntary agreement as provided herein.
(c) The fact that a physician, physician’s assistant or podiatrist is participating in a designated physician health program is confidential, as is all physicians, podiatrists or physicians assistants patient information, acquired, created or used by the physician health program, and it shall remain confidential and may not be subject to discovery or subpoena in a civil case. The disclosure of participation and noncompliance to the appropriate board, as required by a compliance agreement, waives the confidentiality as to the appropriate board for disciplinary purposes.

(d) The physician health program and all persons engaged in physician health program activities are immune from civil liability and no civil action may be brought or maintained while the physician health program and all persons engaged in physician health program activities are acting in good faith and within the scope of their duties.

(e) The boards are immune from civil liability and no civil action may be brought or maintained against the boards or the state for an injury alleged to have been the result of the activities of the physician health program or the boards referral of an individual to the physician health program when they are acting in good faith and within the scope of their duties.

§30-3D-3. Discretionary authority of boards to designate programs.

The West Virginia Board of Medicine and the West Virginia Board of Osteopathy have the sole discretion to designate physician health programs for licensees of the respective boards and no provision of this article may be construed to entitle any physician, podiatrist or physician assistant to the creation or designation of a physician health program for any individual qualifying illness or group of qualifying illnesses.
ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-11a. Records of board; expungement; examination; notice; public information; voluntary agreements relating to alcohol or chemical dependency; confidentiality of same; physician-patient privileges.

(a) The board shall maintain a permanent record of the names of all osteopathic physicians and osteopathic physician assistants, licensed, certified or otherwise lawfully practicing in this state and of all persons applying to be so licensed to practice, along with an individual historical record for each such individual containing reports and all other information furnished the board under this article or otherwise. When the board receives a report submitted pursuant to the provisions of section twelve-a of this article, or when the board receives or initiates a complaint regarding the conduct of anyone practicing osteopathic medicine or surgery, the board shall create a separate complaint file in which the board shall maintain all documents relating to the investigation and action upon the alleged conduct.

(b) Upon a determination by the board that any report submitted to it is without merit, the report shall be expunged from the individual's historical record.

(c) An osteopathic physician, osteopathic physician assistant, or applicant, or authorized representative thereof, has the right, upon request, to examine his or her own individual records maintained by the board pursuant to this article and to place into such record a statement of reasonable length of his or her own view of the correctness or relevance of any information existing in such record. Such statement shall at all times accompany that part of the record in contention.
(d) An osteopathic physician, osteopathic physician assistant or applicant has the right to seek through court action the amendment or expungement of any part of his or her historical record.

(e) An osteopathic physician, osteopathic physician assistant or applicant shall be provided written notice within thirty days of the placement and substance of any information in his or her individual historical record that pertains to him or her and that was not submitted to the board by him or her, other than requests for verification of the status of the individual’s license and the board’s responses thereto.

(f) Except for information relating to biographical background, education, professional training and practice, a voluntary agreement entered into pursuant to subsection (h) of this section and which has been disclosed to the board, prior disciplinary action by any entity, or information contained on the licensure application, the board shall expunge information in an individual's complaint file unless it has initiated a proceeding for a hearing upon such information within two years of the placing of the information into the complaint file.

(g) Orders of the board relating to disciplinary action against a physician, or physician assistant are public information.

(h) (1) In order to encourage voluntary participation in monitored alcohol, chemical dependency or major mental illness programs and in recognition of the fact that major mental illness, alcoholism and chemical dependency are illnesses, an osteopathic physician or osteopathic physician assistant licensed, certified, or otherwise lawfully practicing in this state or applying for a license to practice in this state may enter into a voluntary agreement with the
board-designated physician health program. The agreement between the physician or physician assistant and the physician health program shall include a jointly agreed upon treatment program and mandatory conditions and procedures to monitor compliance with the program of recovery.

(2) Any voluntary agreement entered into pursuant to this subsection shall not be considered a disciplinary action or order by the board, shall not be disclosed to the board and shall not be public information if:

(A) Such voluntary agreement is the result of the physician or physician assistant self-enrolling or voluntarily participating in the board-designated physician health program;

(B) The board has not received nor filed any written complaints regarding said physician or physician assistant relating to an alcohol, chemical dependency or major mental illness affecting the care and treatment of patients, nor received any written reports pursuant to subsection (b), section fourteen of this article relating to an alcohol or chemical dependency impairment; and

(C) The physician or physician assistant is in compliance with the voluntary treatment program and the conditions and procedures to monitor compliance.

(3) If any osteopathic physician or osteopathic physician assistant enters into a voluntary agreement with the board-approved physician health program, pursuant to this subsection and then fails to comply with, or fulfill the terms of said agreement the physician health program shall report the noncompliance to the board within twenty-four hours. The board may initiate disciplinary proceedings pursuant to
section eleven of this article or may permit continued participation in the physician health program or both.

(4) If the board has not instituted any disciplinary proceeding as provided in this article, any information received, maintained, or developed by the board relating to the alcohol or chemical dependency impairment of any osteopathic physician or osteopathic physician assistant and any voluntary agreement made pursuant to this subsection shall be confidential and not available for public information, discovery or court subpoena, nor for introduction into evidence in any medical professional liability action or other action for damages arising out of the provision of or failure to provide health care services.

In the board's annual report of its activities to the Governor and the Legislature required under section twelve, article one of this chapter, the board shall include information regarding the success of the voluntary agreement mechanism established therein: Provided, That in making such report the board shall not disclose any personally identifiable information relating to any osteopathic physician or osteopathic physician assistant participating in a voluntary agreement as provided herein.

Notwithstanding any of the foregoing provisions, the board may cooperate with and provide documentation of any voluntary agreement entered into pursuant to this subsection to licensing boards in other jurisdictions of which the board has become aware and as may be appropriate.

(i) Any physician-patient privilege does not apply in any investigation or proceeding by the board or by a medical peer review committee or by a hospital governing board with respect to relevant hospital medical records, while any of the aforesaid are acting within the scope of their authority: Provided, That the disclosure of any information pursuant to this provision shall not be considered a waiver of any such privilege in any other proceeding.
AN ACT to amend and reenact §30-20-4 of the Code of West Virginia, 1931, as amended, relating to limiting the number of terms a member of the Board of Physical Therapy may serve.

Be it enacted by the Legislature of West Virginia:

That §30-20-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. PHYSICAL THERAPISTS.

§30-20-4. West Virginia Board of Physical Therapy continued; members, terms, meetings, officers, oath, compensation and expenses; general provisions.

1 (a) The West Virginia Board of Physical Therapy is continued and consists of five members appointed by the Governor by and with the advice and consent of the Senate.

4 (b) The members of the board in office on the first day of January, two thousand seven, shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified.

8 (c) Members shall be appointed for staggered terms of five years or until their successors have been appointed and have qualified. Any vacancy shall be filled by appointment by the Governor for the unexpired term of the member whose
office is vacant and the appointment shall be made within sixty days of the occurrence of the vacancy. The Governor may remove any member of the board for incompetency, neglect of duty, gross immorality or malfeasance in office.

(d) Each member of the board is required to:

(1) Be licensed under the provisions of this article or under the former provisions of this article;

(2) Have at least three years' experience as a physical therapist; and

(3) Be actively engaged in the practice of physical therapy.

(e) Members may only serve for two consecutive full terms. A member completing a term on and after the thirtieth day of June, two thousand seven, may not be reappointed if the term the member has just completed is the second of two consecutive full terms. A member who has served two consecutive terms may be appointed to another term only after at least two years have passed since the member’s last term.

(f) Before entering upon the performance of his or her duty, each member shall take and subscribe to the oath prescribed by section five, article IV of the constitution of this state.

(g) The board shall elect from its membership a chairperson and secretary who serve at the will and pleasure of the board.

(h) A majority of the members of the board is a quorum.

(i) The board shall meet at least once annually to transact business. Meetings shall be held at the call of the chairperson.
or upon the written request of three members at the time and
place as designated in the call or request.

(j) Members may be paid compensation and reimbursed
for actual and necessary expenses as provided in section
eleven, article one of this chapter, which compensation and
expenses shall be paid in accordance with the provisions of
this article.

CHAPTER 206

(Com. Sub. for H.B. 2800 - By Delegates Barker, Laquinta,
Manchin, Miley, Yost, Porter, Romine, Rowan, Schoen
and Walters)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to repeal §30-23-6a and §30-23-6b of the Code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §30-3-7a; and to amend and
reenact §30-23-1, §30-23-2, §30-23-3, §30-23-4, §30-23-5,
§30-23-6, §30-23-7, §30-23-8, §30-23-9, §30-23-10,
§30-23-11, §30-23-12, §30-23-13 and §30-23-14 of said code;
and to amend said code by adding thereto sixteen new sections,
designated §30-23-15, §30-23-16, §30-23-17, §30-23-18,
§30-23-19, §30-23-20, §30-23-21, §30-23-22, §30-23-23,
§30-23-24, §30-23-25, §30-23-26, §30-23-27, §30-23-28,
§30-23-29 and §30-23-30, all relating to the practice of medical
imaging and radiation therapy; authorizing rule-making for the
Board of Medicine to regulate Radiologist Assistants; changing
the name of the board; increasing the membership of the board;
clarifying license and permit requirements; defining scopes of
practice; hearing requirements; penalties; and continuation of
the board.

Be it enacted by the Legislature of West Virginia:
That §30-23-6a and §30-23-6b of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §30-3-7a; and that §30-23-1, §30-23-2, §30-23-3, §30-23-4, §30-23-5, §30-23-6, §30-23-7, §30-23-8, §30-23-9, §30-23-10, §30-23-11, §30-23-12, §30-23-13 and §30-23-14 of said code be amended and reenacted; and that said code be amended by adding thereto sixteen new sections, designated §30-23-15, §30-23-16, §30-23-17, §30-23-18, §30-23-19, §30-23-20, §30-23-21, §30-23-22, §30-23-23, §30-23-24, §30-23-25, §30-23-26, §30-23-27, §30-23-28, §30-23-29 and §30-23-30, all to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-7a. Findings and Rule-making authority.

(a) The Legislature finds that it is appropriate and in the public interest to require the Board of Medicine to regulate the practice of Radiologist Assistants.

(b) The West Virginia Board of Medicine, with the advice of the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to:

1. Establish the scope of practice of a Radiologist Assistant;
2. Develop the education and training requirements for a Radiologist Assistant; and
3. Regulate Radiologist Assistants.

ARTICLE 23. MEDICAL IMAGING AND RADIATION THERAPY TECHNOLOGY.

§30-23-1. License required to practice.
§30-23-2. Unlawful acts.
§30-23-3. Applicable law.
§30-23-4. Definitions.
§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.
§30-23-6. Powers and duties of the board.
§30-23-1. License required to practice.

The Legislature finds that in the interest of public health that:

(1) The people of this state should be protected from excessive and improper exposure to ionizing radiation, radioactive isotopes, radio waves, and magnetic fields energy; and

(2) A person performing medical imaging or radiation therapy technology in this state shall be licensed.

Therefore, it is the purpose of this article to regulate the practice of medical imaging or radiation therapy in this state by requiring that a person have a license, apprentice license or permit when practicing medical imaging or radiation therapy technology.

§30-23-2. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice medical imaging or radiation therapy technology in this state without a license, apprentice license or permit...
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 Medical Imaging Technologist or Radiation Therapy Technologist, unless such person has been duly licensed under the provisions of this article, and such license, apprentice license or permit has not expired, been suspended or revoked.

(b) Without a licensee, it is unlawful for any business entity to render any service or engage in any activity which if rendered or engaged in by an individual, would constitute the practice of medical imaging or radiation therapy technology.

§30-23-3. Applicable law.

The practice of medical imaging or radiation therapy technology and the Medical Imaging and Radiation Therapy Technology Board of Examiners are subject to the provisions of article one of this chapter and the provisions of this article and any rules promulgated thereunder.

§30-23-4. Definitions.

As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “ASPMA” means the American Society of Podiatric Medical Assistants.

(b) “Board” means the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners.

(c) “Business entity” means any firm, partnership, association, company, corporation, limited partnership, limited liability company or other entity providing medical imaging or radiation therapy technology.

(d) “Dental X-rays” means X-rays taken of the oral cavity with x-ray units designed for this specific performance.

(e) “License” means a medical imaging and radiation therapy technology license issued under the provisions of this article.
(f) “Licensed practitioner” means a person licensed in West Virginia to practice medicine, chiropractic, podiatry, osteopathy or dentistry.

(g) “Licensee” means a person holding a license issued under the provisions of this article.

(h) “Magnetic Resonance Imaging or MRI” means the performance of medical imaging using radio waves, magnetic fields and a computer to produce images of the body tissues.

(i) “Medical Imaging” means the use of ionizing radiation, electromagnetic radiation, or radioactivity for evaluation of body tissue in order to diagnose injury and disease by means of image production.

(j) “NMTCB” means the Nuclear Medicine Technology Certification Board.

(k) “Nuclear Medicine Technologist” means a person holding a nuclear medicine license issued under the provisions of this article.

(l) “Nuclear Medicine Technology” means the compounding, calibrating, dispensing and administrating of radio-pharmaceuticals, pharmaceuticals and radio-nuclides under the direction of an individual listed as an authorized user by the U.S. Nuclear Regulatory Commission for the production of images for diagnosis and/or treatment of various disorders.

(m) “Permittee” means any person holding a podiatric medical assistant permit issued pursuant to the provisions of this article.

(n) “PET/CT Technologist” means an individual recognized by the board as qualified to operate a PET/CT scanner.

(o) “PET/CT Technology” means the operation of a Positron Emission Tomography/Computerized Tomography scanner to view internal images of the body.
(p) “Podiatric medical assistant” means a person who has been issued a permit under the provisions of this article, to perform podiatric radiographs.

(q) “Podiatric radiographs” means radiographs confined to the foot and ankle performed on dedicated podiatric X-ray equipment.

(r) “Practice of Medical Imaging and Radiation Therapy Technology” means the practice of Radiologic Technology, Radiation Therapy, Nuclear Medicine Technology and Magnetic Resonance Imaging Technology.

(s) “Radiologic technologist” means a person, other than a licensed practitioner, who applies medical imaging or assists in the application of ionizing radiation to human beings for diagnostic or therapeutic purposes as prescribed by a licensed practitioner.

(t) “Radiologic technology” means the application of ionizing radiation or assisting in the application of medical imaging to human beings for diagnostic or therapeutic purposes as prescribed by a licensed practitioner.

(u) "Radiologist" means a licensed practitioner who has successfully completed a residency in the field of Radiology and specializes in the use of medical imaging for the diagnosis or treatment of disease.

(v) “Radiologist Assistant or RA” means an individual who is licensed under the rules of the West Virginia Board of Medicine and has completed specialized training from an accredited program in the profession and passed a written examination as recognized by the West Virginia Board of Medicine.

(w) “Radiology resident” means a licensed practitioner who is in training to become a Radiologist and who uses medical imaging in the diagnosis or treatment of disease, under the supervision of a Radiologist.

(x) “Supervision” means responsibility for and control of quality, safety and technical aspects in the application of medical imaging technology on human beings for diagnostic or therapeutic purposes.
§30-23-5. Medical Imaging and Radiation Therapy Technology Board of Examiners.

(a) The West Virginia Radiologic Technology Board of Examiners is hereby continued and commencing the first day of July, two thousand seven, shall be known as the West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners. The members of the board in office on the first day of July, two thousand seven, shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) Commencing the first day of July, two thousand seven, the board shall consist of the following eleven members:

(1) One Radiologic Health Specialist from the Radiation, Toxics and Indoor Air Division of the West Virginia Department of Health and Human Resources;

(2) Three licensed practitioners, two of whom shall be Radiologists;

(3) Three licensed Radiologic Technologists, one of whom shall be an active medical imaging educator;

(4) One licensed Nuclear Medicine Technologist, appointed prior to the first day of July, two thousand seven, by the Governor with the advice and consent of the Senate;

(5) One licensed Magnetic Resonance Imaging technologist, appointed prior to the first day of July, two thousand seven, by the Governor with the advice and consent of the Senate; and

(6) Two citizen members who are not licensed under the provisions of this article and do not perform any services related to the practice licensed under the provisions of this article.
(c) Each member shall be appointed for a term of three years and may not serve more than two consecutive full terms. A member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until a successor has been appointed and has qualified. The terms shall be staggered in accordance with the initial appointments under prior enactments of this article. Any member serving on the board on the effective date of this article may be reappointed in accordance with the provisions of this section.

(d) Each member of the board shall be a resident of West Virginia during the appointment term.

(e) The Radiologic Technologists, Nuclear Medicine Technologists and the Magnetic Resonance Imaging Technologists serving on the board shall maintain an active license with the board.

(f) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant.

(g) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(h) A licensed member of the board immediately and automatically forfeits membership to the board if his or her license to practice has been suspended or revoked. A member of the board immediately and automatically forfeits membership to the board if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(i) The board shall designate one of its members as Chairperson and one member as Secretary who shall serve at the will of the board.

(j) Each member of the board shall receive compensation and expense reimbursement in accordance with article one of this chapter.

(k) A majority of the members of the board shall constitute a quorum.
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68 (l) The board shall hold at least two annual meetings.
69 Other meetings shall be held at the call of the Chairperson or
70 upon the written request of two members, at such time and
71 place as designated in the call or request.

72 (m) Prior to commencing his or her duties as a member
73 of the board, each member shall take and subscribe to the
74 oath required by section five, article four of the Constitution
75 of this state.

§30-23-6. Powers and duties of the board.

1 (a) The board has all the powers and duties set forth in
2 this article, by rule, in article one of this chapter, and
3 elsewhere in law.

4 (b) The board’s powers and duties include:

5 (1) Holding meetings, conducting hearings and
6 administering examinations and reexaminations;

7 (2) Setting the requirements for a license, apprentice
8 license and permit to practice Medical Imaging or Radiation
9 Therapy Technology;

10 (3) Establishing procedures for submitting, approving and
11 rejecting applications for a license, apprentice license and
12 permit;

13 (4) Determining the qualifications of any applicant for a
14 license, apprentice license and permit;

15 (5) Providing standards for approved schools of Medical
16 Imaging and Radiation Therapy Technology, procedures for
17 obtaining and maintaining approval, and procedures of
18 revocation of approval where standards are not maintained:
19 Provided, That the standards for approved schools meet at
20 least the minimal requirements of the American Registry of
21 Radiologic Technologist;

22 (6) Working with the West Virginia Board of Medicine
23 to determine the scope of practice, the required education and
24 training, and the type of regulations necessary for Radiologist
25 Assistants;
(7) Preparing, conducting, administering and grading written, examinations and reexaminations for a license, apprentice license and permit;

(8) Contracting with third parties to prepare and/or administer the examinations and reexaminations required under the provisions of this article;

(9) Determining the passing grade for the examinations;

(10) 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;

(11) Maintaining an accurate registry of names and addresses of all persons regulated by the board;

(12) Defining, by legislative rule, the fees charged under the provisions of this article;

(13) Issuing, renewing, denying, suspending, revoking or reinstating licenses, apprentice licenses and permits;

(14) Establishing, by legislative rule, the continuing education requirements for licensees;

(15) Suing and being sued in its official name as an agency of this state;

(16) 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;

(17) Investigating alleged violations of the provisions of this article, the rules promulgated hereunder, and orders and final decisions of the board;

(18) Conducting disciplinary hearings of all persons regulated by the board;

(19) Setting disciplinary action and issuing orders;

(20) Instituting appropriate legal action for the enforcement of the provisions of this article;
(21) Keeping accurate and complete records of its proceedings, and certifying the same as may be appropriate;

(22) Proposing rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article;

(23) Conferring with the Attorney General or his or her assistants in connection with all legal matters and questions; and

(24) Taking all other actions necessary and proper to effectuate the purposes of this article.

§30-23-7. Rule making.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licensure, apprentice licensure and permits to practice medical imaging or radiation therapy technology;

(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;

(5) Standards for approval of courses;

(6) Procedures for the issuance and renewal of a license, apprentice license and permit;

(7) A fee schedule;

(8) Continuing education requirements for licensees;

(9) The procedures for denying, suspending, revoking, reinstating or limiting the practice of a licensee or permittee;
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20 (10) Requirements for inactive or revoked licenses, apprentice licenses and permits; and

22 (11) Any other rules necessary to effectuate the provisions of this article.

24 (b) All rules in effect on the effective date of this article shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this act are interpreted to mean provisions of this article.

§30-23-8. Fees; special revenue account; administrative fines.

1 (a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the “Board of Examiners of Medical Imaging Technology 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.

§30-23-9. Requirements for Radiologic Technology license.

1 (a) To be eligible for a license to practice Radiologic Technology, the applicant must:

3 (1) Be of good moral character;

4 (2) Have a high school diploma or its equivalent;

5 (3) Have successfully completed an accredited course in Radiologic study technology, as determined by an accreditation body recognized by the board, from a school of Radiologic Technology that has been approved by the board;
(4) Have passed the examination prescribed by the board, which examination shall cover the basic subject matter of Radiologic Technology, skills and techniques; and

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed; and

(6) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed.

(b) A person seeking a Radiologic Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

c) A Radiologic Technology license issued by the board prior to the first day of July, two thousand seven, shall for all purposes be considered a license issued under this article.

§30-23-10. Scope of Practice for a Radiologic Technologist.

The scope of practice of a Radiologic Technologist includes the following:

(1) Analysis and correlation of procedure requests and clinical information provided by a physician or patient, or both, for pre-procedure determination of the appropriate exam, its extent, and its scope;

(2) Evaluation of the physical, mental and emotional status of the patient with respect to the ability to understand the risk versus benefit of the procedure and to undergo the procedure requested;

(3) Selection, preparation, and operation of radiography equipment and accessories to perform procedures;
(4) Positioning patient to best demonstrate anatomy of interest, while respecting patient's physical limitations and comfort;

(5) Determination of radiographic exposure factors, setting of factors on control panel, and application of x-ray exposures;

(6) Application of radiation protection principles to minimize radiation exposure to patient, self, and others;

(7) Evaluation of images for technical quality;

(8) Performance of noninterpretive fluoroscopic procedures according to institutional policy;

(9) Oversight of image processing standards and the appropriate labeling of images;

(10) Administering contrast media after consultation with, and under the supervision of, a physician who is immediately and physically available;

(11) Maintaining values congruent with the profession’s Code of Ethics and scope of practice as well as adhering to national, institutional and/or departmental standards, policies and procedures regarding delivery of services and patient care; and

(12) Performing any other duties that the board authorizes for a Radiologic Technologist.

§30-23-11. Scope of Practice for a Radiation Therapist.

The scope of practice for a Radiation Therapist includes the following:

(1) Providing Radiation Therapy services by contributing as an essential member of the radiation oncology treatment
team through provision of total quality care of each patient undergoing a prescribed course of treatment;

(2) Evaluating and assessing treatment delivery components;

(3) Providing Radiation Therapy treatment delivery services to cure or improve the quality of life of patients by accurately delivering a prescribed course of treatment;

(4) Evaluating and assessing daily, the physical and emotional status of each patient to treatment delivery;

(5) Maintaining values congruent with the profession’s Code of Ethics and scope of practice as well as adhering to national, institutional and/or departmental standards, policies and procedures regarding treatment delivery and patient care; and

(6) Performing any other duties that the board authorizes for a Radiation Therapist.

§30-23-12. Exemptions from Radiologic Technology license.

The following persons are not required to obtain a Radiologic Technology license in accordance with the provisions of this article:

(1) A Medical Imaging Technology student enrolled in and attending an approved school of Medical Imaging Technology who as part of his or her course of study applies medical imaging technology to a human being under the supervision of a licensed Medical Imaging Technologist;

(2) A person acting as a dental assistant or dental hygienist who under the supervision of a licensed dentist operates only radiographic dental equipment for the sole purpose of dental radiography of the oral cavity;

(3) A person engaged in performing the duties of a Medical Imaging Technologist in the person's employment...
(4) A licensed practitioner, Radiologist or Radiology resident;

(5) A person licensed as a Radiologist Assistant under the West Virginia Board of Medicine; and

(6) A person who demonstrated to the board, prior to the first day of July, one thousand nine hundred ninety-nine, that he or she:

(A) Had engaged in the practice of Radiologic Technology for the limited purpose of performing bone densitometry in this state for five or more years;

(B) Practiced under the supervision of a licensed practitioner; and

(C) Received a densitometry technologist degree certified by the International Society for Clinical Densitometry.

§30-23-13. Requirements for temporary Radiologic Technology license.

(a) The board may issue a temporary Radiologic Technology license to engage in the practice of Radiologic Technology in this state to an applicant who meets the qualifications for a Radiologic Technology license, but has not passed the examination.

(b) Temporary licenses expire as provided by rule.

§30-23-14. Radiologic Technology license from another state; license to practice in this state.

(a) The board may issue a license to practice Radiologic Technology in this state, without requiring an examination, to an applicant from another jurisdiction who:
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(1) Is not a resident of this state;

(2) Is of good moral character:

(3) Holds a valid Radiologic Technology license, certificate or other authorization, including the American Registry of Radiologic Technologists, to practice Radiologic Technology in another jurisdiction and meets requirements which are substantially equivalent to the Radiologic Technology licensure requirements set forth in this article;

(4) 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 Radiologic Technology, and has never had a license or other authorization to practice Radiologic Technology revoked;

(5) Has not previously failed an examination for licensure in this state;

(6) Has paid all the applicable fees; and

(7) Has completed such other action as required by the board.

(b) A license, apprentice license or permit is not required for a Medical Imaging or Radiation Therapy Technologist from another jurisdiction, if that person:

(1) Is not a resident of this state;

(2) Holds a valid Medical Imaging or Radiation Therapy Technology license, certificate or other authorization, to practice Medical Imaging or Radiation Therapy Technology in another jurisdiction and meets requirements which are substantially equivalent to the Medical Imaging or Radiation Therapy Technology licensure requirements set forth in this article;

(3) Has no regular place of practice in this state; and
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(4) Engages in the practice of Medical Imaging or Radiation Therapy Technology in this state for a period of not more than ten days in any calendar year.

§30-23-15. Requirements for Nuclear Medicine Technologist license.

(a) To be eligible for a license to practice Nuclear Medicine Technology, the applicant must:

1. Be of good moral character;
2. Have a high school diploma or its equivalent;
3. Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed;
4. Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed.
5. Meet one of the following qualifications:
   (A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;
   (B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;
   (C) National certification as a certified Nuclear Medicine Technologist (CNMT);
   (D) National certification as a Registered Radiographer (ARRT (R));
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(E) National certification as a Registered Radiographer specializing in Nuclear Medicine (ARRT (N)); or

(F) National certification as a Radiation Therapist (ARRT(T)); and

(6) Pass an examination which has been approved by the board, with a minimum passing score of seventy-five percent, which examination shall cover the basic subject matter of medical imaging, radiation safety, skills and techniques as it pertains to Nuclear Medicine.

(b) A person seeking a Nuclear Medicine Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Nuclear Medicine Technology license issued by the board prior to the first day of July, two thousand seven, shall for all purposes be considered a license issued under this article: Provided, That a person holding a Nuclear Medicine Technology license issued prior to the first day of July, two thousand seven, must renew the license pursuant to the provisions of this article.


The scope of practice for Nuclear Medicine Technology includes the following:

(1) The practice of diagnostic in-vivo procedures and in-vitro procedures which include:

(A) Analysis and correlation of procedure request and clinical information provided by the referring physician or patient, or both, for determination of appropriate exam, extent, and scope;
(B) Evaluation of the physical and emotional status of the patient with respect to the ability to undergo the procedure requested;

(C) Immediate pre-dose review of patient's identification, prescribed dose quantity and route of administration, and identification of the test agent designed to prevent dose mis-administration;

(D) Preparation of the appropriate radiopharmaceutical with measurement of dose activity;

(E) Administration of appropriate diagnostic dose levels of radiopharmaceuticals;

(F) Administration of non-radioactive pharmaceuticals utilized in conjunction with a nuclear medicine imaging or in-vivo procedure, for example, cholecystokinin, furosemide, vitamin B12, in accordance with hospital or facility procedures, excluding narcotic and sedating medication;

(G) Selection of appropriate imaging or test parameters, or both;

(H) Obtaining images according to established protocols and any special views to optimize information as appropriate;

(I) Placement of patient in proper position using supportive materials and immobilizer as necessary;

(J) Assuring appropriate image labeling as to patient;

(K) Monitoring of patient and equipment during procedure for determination and application of any corrective actions necessary;

(L) Monitoring of data collection and processing and performance of technical analysis of test results;

(M) Preparation and performance of laboratory in-vivo nuclear medicine procedures, inclusive of the selection and
operation of laboratory counting equipment, performance of calculations and data processing necessary for completion of lab procedures and the submission of results to the physician or licensee;

(N) Oversight and application of image development; and

(O) Performance of in-vitro testing of serum, plasma, or other body fluids using radio immunoassay, or similar ligand assay methods.

(2) The practice for handling radiopharmaceuticals which includes:

(A) Preparation, by means of tagging, compounding, etc., in accordance with manufacturer's specifications;

(B) Measurement and calculation of activity of radionuclides with a dose calibrator;

(C) Application of radioactive decay calculations to determine required volume or unit form necessary to deliver the prescribed radioactive dose; and

(D) Recording of radiopharmaceutical information on a patient's permanent record.

(3) The practice for radionuclide therapy which includes:

(A) Assisting licensee in the preparation and applications of therapeutic radionuclides;

(B) Oversight of radiation safety practices related to the handling and administration of radiopharmaceuticals for therapy of patients;
(C) Maintenance of records of radioactive material receipt, use, storage, and disposal in accordance with regulatory requirements;

(D) Oversight and enforcement of radiation safety policies, practices, and regulations regarding the possession and use of radioactive materials;

(E) Performance of radiation safety procedures such as radiation survey and wipe testing of incoming radioactive shipments and facility fixtures;

(F) Maintaining values congruent with the profession’s code of ethics and scope of practice as well as adhering to national, institutional and/or departmental standards, policies and procedures regarding delivery of services and patient care; and

(G) Performing any other duties that the board determines may be performed by a Nuclear Medicine Technologist.

(4) The scope of practice for a Nuclear Medicine Technologist to operate a PET/CT unit requires that:

(A) The operation of a PET/CT unit that is only capable of producing “nondiagnostic” CT images solely for the purpose of fusion with PET images may be performed by an individual licensed by the board as a Nuclear Medicine Technologist, provided the licensee has obtained proper documented training that has been approved by the board in the radiation safety aspect of the operation of these units; and

(B) The operation of a PET/CT unit with the capability of producing “diagnostic” CT images shall require the Nuclear Medicine Technologist dual certification in Nuclear Medicine (ARRT(N) or NMTCB) and Radiologic Technology (ARRT(R)).
§30-23-17. Requirements for Magnetic Resonance Imaging Technologist license.

(a) To be eligible for a license to practice Magnetic Resonance Imaging Technology, the applicant must:

(1) Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed;

(4) Not have been convicted of a misdemeanor or a felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Medical Imaging, which conviction remains unreversed.

(5) Meet one of the following qualifications:

(A) Have a baccalaureate or associate degree in one of the physical or biological sciences pertaining to the Medical Imaging or Radiation Therapy profession;

(B) Have a baccalaureate or associate degree in other disciplines of Medical Imaging with successful completion of courses in the following areas: college algebra, physics or chemistry, human anatomy, physiology, and radiation safety;

(C) National certification as a certified Nuclear Medicine Technologist (CNMT);

(D) National certification as a registered Radiographer (ARRT (R));
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26 (E) National certification as a registered Radiographer specializing in Nuclear Medicine (ARRT (N)); or

28 (F) National certification as a Radiation Therapist (ARRT(T)); and

30 (G) Pass an examination which has been approved by the board, with a minimum passing score of seventy-five percent, which examination shall cover the basic subject matter of Medical Imaging, radiation safety, skills and techniques as it pertains to Magnetic Resonance Imaging.

(b) A person seeking a Magnetic Resonance Imaging Technology license shall submit an application on a form prescribed by the board and pay the license fee, which fee shall be returned to the applicant if the license application is denied.

(c) A Magnetic Resonance Imaging Technology license issued by the board prior to the first day of July, two thousand seven, shall for all purposes be considered a license issued under this article: Provided, That a person holding a Magnetic Resonance Imaging Technology license issued prior to the first day of July, two thousand seven, must renew the license pursuant to the provisions of this article.


1 The scope of practice for Magnetic Resonance Imaging Technology includes the following:

3 (1) Make arrangements with other departments for ancillary patient services (e.g. transportation, anesthesia);

5 (2) Orient patient and family to requirements necessary for the exam and instruct patient regarding preparation prior to imaging procedures;
(3) Assist with scheduling patients and coordinating exams to assure smooth work flow and review patient’s chart to verify physician’s orders;

(4) Assist patient on and off the scanning table and maintain communication and provide reassurance to patient throughout scanning procedure;

(5) Obtain patient’s medical history prior to scan and observe patient’s vital signs, O2 saturation, patient’s level of consciousness during scanning procedure, and observe patient’s physical status prior to discharge from the scanning procedure;

(6) Maintain controlled access to restricted area of strong magnetic field to ensure safety of patients, visitors, and hospital personnel and screen patient for ferrous and RF-sensitive material prior to entrance into magnetic field;

(7) Evacuate patient in emergency situation (e.g., quench, code, metallic object);

(8) Provide hearing protection to patient and others;

(9) Inspect equipment to make sure it is operable and safe (e.g., coils, cables, door seals), perform document and interpret the results of daily QC tests (center frequency, signal to noise, image quality and artifacts);

(10) Monitor specific absorption rate (SAR) and cryogen levels;

(11) Position patient according to type of study indicated and enter patient’s data needed to initiate scan;

(12) Explain the risks of contrast media injections, obtain signed consent form, determine appropriate dose required,
program or activate the power injector and administer the
contrast media;

(13) Select all parameters needed to obtain a highly
diagnostic image;

(14) Archive images to or retrieve images from data
storage devices;

(15) Evaluate quality of filmed images and reformat
images;

(16) Perform automatic or manual frequency tuning;

(17) Differentiate between normal and abnormal images
to assess completion of procedure;

(18) Monitor image production and discriminate between
technically acceptable and unacceptable images;

(19) Maintaining values congruent with the profession’s
code of ethics and scope of practice as well as adhering to
national, institutional and/or departmental standards, policies
and procedures regarding delivery of services and patient
care; and

(20) Perform any other duties that the board authorizes.

§30-23-19. Requirements for an apprentice license for Nuclear
Medicine Technologists and Magnetic
Resonance Imaging Technologists.

(a) The board may issue an apprentice license to an
individual who is practicing as a Nuclear Medicine
Technologist or a Magnetic Resonance Imaging Technologist
prior to the first day of July, two thousand seven but has not
obtained certification in the discipline. A notarized letter,
signed by the individual’s supervising licensed physician,
must be submitted with the individual’s application, stating that the individual has performed the duties of a Nuclear Medicine Technologist or Magnetic Resonance Imaging Technologist prior to the first day of July, two thousand seven.

(b) The apprentice license is valid for one year. An apprentice license may be renewed annually for an additional four years, giving the individual a total of five years to complete the requirements and successfully pass the certification examination for a Nuclear Medicine Technologist license or a Magnetic Resonance Imaging Technologist license. All individuals possessing an apprentice license must work under the direct supervision of a licensed practitioner or a technologist who is licensed in that discipline.

(c) Any individual possessing a valid Medical Imaging license issued by the Board and seeks to cross-train in the discipline of Nuclear Medicine Technology or Magnetic Resonance Imaging Technology, may obtain an apprentice license in that discipline for the purpose of obtaining the necessary clinical experience requirements in order to qualify to sit for the required examination. This apprentice license will be valid for one year and renewable for one year, giving a cross-trained individual two years to obtain certification in the discipline.

(d) Any individual not meeting the certification requirements by the first day of July, two thousand twelve, will not be permitted to work as a Nuclear Medicine or Magnetic Resonance Imaging Technologist.

§30-23-20. Requirements for Podiatric Medical Assistant permit.

(a) To be eligible for a Podiatric Medical Assistant permit to perform podiatric radiographs, the applicant must:
Be of good moral character;

(2) Have a high school diploma or its equivalent;

(3) Pass a written examination for certification from the American Society of Podiatric Medical Assistants (ASPMA);

(4) Maintain an active certification in the American Society of Podiatric Medical Assistants (ASPMA) and meet all requirements of that organization including the continuing education requirements;

(5) Not have been convicted of a felony under the laws of any state or the United States within five years preceding the date of application for licensure, which conviction remains unreversed; and

(6) Not have been convicted of a misdemeanor or felony under the laws of any state or the United States at any time if the offense for which the applicant was convicted related to the practice of Radiologic Technology, which conviction remains unreversed.

(b) A person seeking a Podiatric Medical Assistant permit shall submit an application on a form prescribed by the board and pay the permit fee, which fee shall be returned to the applicant if the permit application is denied.

Upon application for renewal, the permittee shall submit documentation of an active certification in ASPMA and payment of a renewal fee.

(c) A Podiatric Medical Assistant permit issued by the board prior to the first day of July, two thousand seven, shall for all purposes be considered a permit issued under this
Provided, That a person holding a Podiatric Medical Assistant permit issued prior to the first day of July, two thousand seven, must renew the permit pursuant to the provisions of this article.


1 The scope of practice for a Podiatric Medical Assistant includes the following:

2 (a) The use of equipment specifically designed for the performance of foot or ankle podiatric radiographs, as approved by the board; and

3 (b) Performed under the supervision of a licensed Podiatrist.

§30-23-22. License and permit renewal requirements.

1 (a) A licensee and permittee shall annually renew his or her license or permit by completing a form prescribed by the board, paying a renewal fee, and submitting any other information required by the board.

2 (b) The board shall charge a fee for each renewal of a license or permit and a late fee for any renewal not paid in a timely manner.

3 (c) The board shall require as a condition for the renewal of a license and permit that each licensee or permittee complete continuing education requirements.

4 (d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license or permit.
§30-23-23. Display of license.

1. (a) The board shall prescribe the form for a license and permit and may issue a duplicate license or permit, upon payment of a fee.

2. (b) A licensee shall conspicuously display his or her license at his or her principal place of practice. A photocopy of the original license shall be conspicuously displayed at his or her secondary place of employment.

3. (c) A permittee shall conspicuously display his or her permit at his or her principal place of practice. A photocopy of the original permit shall be conspicuously displayed at his or her secondary place of employment.

§30-23-24. Refusal to issue or renew, suspension or revocation; disciplinary action.

1. (a) The board may refuse to issue, refuse to renew, suspend, revoke or limit any license, apprentice license, permit or practice privilege and may take disciplinary action against a licensee or permittee who, after notice and a hearing, has been adjudged by the board as unqualified for any of the following reasons:

2. (1) Fraud, misrepresentation or deceit in obtaining or maintaining a license or permit;

3. (2) Failure by any licensee or permittee to maintain compliance with the requirements for the issuance or renewal of a license, apprentice license or permit;

4. (3) Dishonesty, fraud, professional negligence in the performance of medical imaging or radiation therapy technology, or a willful departure from the accepted standards of practice and professional conduct;
(4) Violation of any provision of this article or any rule promulgated hereunder;

(5) Violation of any professional standard or rule of professional conduct;

(6) Failure to comply with the provisions of this article or any rule promulgated hereunder;

(7) Failure to comply with any order or final decision of the board;

(8) Failure to respond to a request or action of the board;

(9) Conviction of a crime involving moral turpitude;

(10) Conviction of a felony or a crime involving dishonesty or fraud or any similar crime under the laws of the United States, this state or another jurisdiction, if the underlying act or omission involved would have constituted a crime under the laws of this state;

(11) Knowingly using any false or deceptive statements in advertising;

(12) Any conduct adversely affecting the licensee’s or permittee’s fitness to perform Medical Imaging or Radiation Therapy Technology; or

(13) Except in emergency situations, failed to obtain written authorization from the attending licensed practitioner or from the patient and if the patient is a minor, from a parent or a person having custody of the minor.

(b) The board shall suspend or revoke any license or permit if it finds the existence of any grounds which would justify the denial of an application for such license or permit if application were then being made for it.

(c) If the board suspends, revokes, refuses to issue, refuses to renew or limits any license, permit 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 or permit is ordered suspended or revoked, then the licensee or permittee shall, within twenty days after receipt of the order, return the license, apprentice license or permit to the board. The hearing shall be held in accordance with the provisions of this article.

(d) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fines, and mandatory attendance at continuing education seminars.

§30-23-25. 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 or permittee. 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 or permittee. For the purposes of an investigation, a member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation.

(b) Upon receipt of a written complaint filed against any licensee or permittee, the board shall provide a copy of the complaint to the licensee or permittee.

(c) If the board finds, upon investigation, that probable cause exists that the licensee or permittee has violated any provision of this article or the rules promulgated hereunder, then the board shall serve the licensee or permittee 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.

(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) Either party may elect to have an administrative law judge or hearing examiner conduct the hearing and must notify the other party of the election. The administrative law judge or hearing examiner, at the conclusion of a hearing, shall prepare a proposed order which shall contain findings of fact and conclusions of law. Disciplinary action may be a part of the proposed order, or the board may reserve this obligation for its consideration. The board may accept, reject or modify the decision of the administrative law judge or hearing examiner.

(c) For the purpose of conducting a hearing, a member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum which shall be issued, served, and enforced as specified in section one, article five, chapter twenty-nine-a of this code, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of a hearing hereunder.

(d) If, after a hearing, the board determines the licensee or permittee has violated any provision of this article, or the board’s rules, a formal decision shall be prepared and signed by a member of the board or the executive director of the board, which contains findings of fact, conclusions of law and specifically lists the disciplinary actions imposed.

(e) Any licensee or permittee 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.
§30-23-27. 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) The board may fine and/or issue cease and desist orders against individuals and/or firms found to be in violation of the provisions of this article or any rule adopted thereunder.

(c) A cause of action by the board may be brought in the Circuit Court of Kanawha County or in the Circuit Court of the county where the cause of action took place.

§30-23-28. 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
12 dollars and no more than one thousand dollars for each
13 violation, imprisoned for up to six months for each violation,
14 or both fined and imprisoned.


1 In any action brought or in any proceeding initiated under
2 this article, evidence of the commission of a single act
3 prohibited by this article is sufficient to justify a penalty,
4 injunction, restraining order or conviction without evidence
5 of a general course of conduct.

§30-23-30. Continuation of the West Virginia Medical Imaging
and Radiation Therapy Technology Board of Examiners.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the West Virginia Medical Imaging and Radiation
3 Therapy Technology Board of Examiners shall continue to
4 exist until the first day of July, two thousand twelve, unless
5 sooner terminated, continued or reestablished.

CHAPTER 207

(Com. Sub. for S.B. 442 - By Senators Bowman, Jenkins,
Plymale, Minard, McKenzie, White and Hunter)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-
5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and
§18-29-11 of the Code of West Virginia, 1931, as amended; to
repeal §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5,
§29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-
6A-11 and §29-6A-12 of said code; to amend and reenact §5-5-
4 and §5-5-5 of said code; to amend and reenact §5B-2-5 of
said code; to amend and reenact §5F-2-1 of said code; to amend
said code by adding thereto a new article, designated §6C-2-1,
§6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; to amend said code by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; to amend and reenact §11-10A-8 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-7-4 of said code; to amend and reenact §21-5E-4 of said code; to amend and reenact §22C-7-2 of said code; to amend and reenact §31-20-27 of said code; to amend and reenact §33-48-2 of said code; and to amend and reenact §49-5E-5a of said code, all relating to state employees grievance procedures; establishing a new West Virginia public employees grievance procedure; discontinuing the Education and State Employees Grievance Board; creating the West Virginia Public Employees Grievance Board with five members appointed by the Governor; giving the board new powers, duties, rule-making authority and data collection responsibilities; creating a uniform grievance procedure with three levels for certain public employees; clarifying definitions and general grievance procedures; prohibiting supervisors from representing employees they evaluate; clarifying and reorganizing general provisions; increasing time frames in grievance procedure; defining default provisions; eliminating laches and defining back pay; establishing that employees may be represented at conferences, hearings and meetings at any step of the procedure; clarifying the procedure for conferences and hearings; removing hearing examiners from the grievance procedure; and making technical corrections to affected sections of the code.

Be it enacted by the Legislature of West Virginia:

That §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended, be repealed; that §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code be repealed; that §5-5-4 and §5-5-5 of said code be amended and reenacted; that §5B-2-5 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; that said code be amended by adding thereto a new article,
designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; that §11-10A-8 of said code be amended and reenacted; that §18A-2-8 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-7-4 of said code be amended and reenacted; that §21-5E-4 of said code be amended and reenacted; that §22C-7-2 of said code be amended and reenacted; that §31-20-27 of said code be amended and reenacted; that §33-48-2 of said code be amended and reenacted; and that §49-5E-5a 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.


5F. Reorganization of the Executive Branch of State Government.

6C. Public Employees.

11. Taxation.

18A. School Personnel.

18B. Higher Education.


22C. Environmental Resources; Boards.


33. Insurance.


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 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.

§5-5-5. Pay equity adjustment.

§5-5-4. Department of Health and Human Resources pay equity salary adjustment.

1 The Legislature hereby directs that a pay equity salary adjustment be provided for employees of the various agencies of the Department of Health and Human Resources. This salary adjustment shall be provided from the funding appropriated to the department in the fiscal year two
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6 thousand and may not be construed to require additional
7 appropriations from the Legislature. In the event any
8 provision of this section conflicts with any rule, policy or
9 provision of this code, the provisions of this section control.
10 In determining the pay equity salary adjustments, the
11 department may give consideration to employee tenure,
12 relevant average salaries and such other factors as may be
determined relevant by the secretary. Due to the limits of
14 funding, the results of the pay equity salary adjustments shall
15 not be subject to the provisions of article two, chapter six-c
16 of this code. The provisions of this section are rehabilitative
17 in nature and it is the specific intent of the Legislature that no
18 private cause of action, either express or implied, shall arise
19 pursuant to the provisions or implementation of this section.

§5-5-5. Pay equity adjustment.

1 The Legislature hereby directs that a gender-based pay
2 equity salary adjustment be provided to public employees as
determined by the Secretary of the Department of
3 Administration, based on recommendations of the equal pay
4 commission, within the limitations provided by this section.
5 This salary adjustment shall be provided from the funding
6 appropriated to the Department of Administration, office of
7 the secretary, for purposes of a “pay equity reserve” in the
8 fiscal year two thousand two and may not be construed to
9 require additional appropriations from the Legislature. If any
10 provision of this section conflicts with any rule, policy or
11 provision of this code, the provisions of this section control.
12 Because the provisions of this section are rehabilitative in
13 nature, the results of the pay equity salary adjustments are not
subject to the provisions of article two, chapter six-c of this
14 code. Further, it is the specific intent of the Legislature that
15 no private cause of action, either express or implied, is
16 created by or otherwise arises from the enactment, provisions
17 or implementation of this section.

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ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

5B-2-5. Economic development representatives.

(a) The director may employ economic development representatives to be paid a base salary within legislative appropriations to the West Virginia Development Office, subject to provisions set forth by the council in its reorganization plan and applicable contract provisions pursuant to section four of this article. Economic development representatives may receive performance-based incentives and expenses paid from private funds from a nonprofit corporation contracting with the West Virginia Development Office pursuant to the provisions of section four of this article. The director shall establish job descriptions and responsibilities of economic development representatives, subject to the provisions of any contract with a nonprofit corporation entered into pursuant to section four of this article.

(b) Notwithstanding any provision of this code to the contrary, economic development representatives employed within the West Virginia Development Office are not subject to the procedures and protections provided by articles six and six-a, chapter twenty-nine of this code. Any employee of the West Virginia Development Office on the effective date of this article who applies for employment as an economic development representative is not entitled to the protections of article six, chapter twenty-nine with respect to hiring procedures and qualifications; and upon accepting employment as an economic development representative, the employee relinquishes the protections provided for in article two, chapter six-c and article six, chapter twenty-nine of this code.
ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

*§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

1. Building Commission provided in article six, chapter five of this code;
2. Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;
3. Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;
4. Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;
5. West Virginia Public Employees Grievance Board provided for in article three, chapter six-c of this code;
6. Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;
7. Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
8. Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;
9. Division of Personnel provided in article six, chapter twenty-nine of this code;

*Clerk's Note: This section was also amended by S.B. 582 (Chapter 214), S.B. 177 (Chapter 111) and S.B. 454 (Chapter 27) which passed subsequent to this act.
(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;
(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.
(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.
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(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;

(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;
(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;

(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;
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(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;

(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;
(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;
(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(l) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(m) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to
and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(n) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

CHAPTER 6C. PUBLIC EMPLOYEES.

Article
2. West Virginia Public Employees Grievance Procedure.
3. West Virginia Public Employees Grievance Board.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.
§6C-2-2. Definitions.
§6C-2-4. Grievance procedural levels.
§6C-2-5. Enforcement and appeal.
§6C-2-6. Allocation of expenses and attorney’s fees.
§6C-2-7. Mandamus proceeding.

§6C-2-1. Purpose.

1 (a) The purpose of this article is to provide a procedure for the resolution of employment grievances raised by the
public employees of the State of West Virginia, except as otherwise excluded in this article.

(b) Resolving grievances in a fair, efficient, cost-effective and consistent manner will maintain good employee morale, enhance employee job performance and better serve the citizens of the State of West Virginia.

(c) Nothing in this article prohibits the informal disposition of grievances by stipulation or settlement agreed to in writing by the parties, nor the exercise of any hearing right provided in chapter eighteen or eighteen-a of this code.

(d) Effective the first day of July, two thousand seven, any reference in this code to the education grievance procedure, the state grievance procedure, article twenty-nine, chapter eighteen of this code or article six-a, chapter twenty-nine of this code, or any subsection thereof, shall be considered to refer to the appropriate grievance procedure pursuant to this article.

(e) Any grievance proceeding which is in process on the effective date of the enactment of this article will be completed as expeditiously as possible, and all outstanding orders for hearings must be completed by the first day of July, two thousand seven. Parties to grievances for which a hearing has not been held may, by agreement, proceed to either level two or level three.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.
(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a grievance. A "chief administrator" includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee’s workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an "employee" only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) "Employee" does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the Superintendent of the State Police. "Employee" does not mean an employee of a constitutional officer unless he or she is covered under the civil service
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system, an employee of the Legislature, or a patient or inmate
employed by a state institution.

(e) "Employee organization" means an employee
advocacy organization with employee members that has filed
with the board the name, address, chief officer and
membership criteria of the organization.

(f) "Employer" means a state agency, department, board,
commission, college, university, institution, state board of
education, department of education, county board of
education, regional educational service agency or
multicounty vocational center, or agent thereof, using the
services of an employee as defined in this section.

(g) (1) "Grievance" means a claim by an employee
alleging a violation, a misapplication or a misinterpretation
of the statutes, policies, rules or written agreements
applicable to the employee including:

(i) Any violation, misapplication or misinterpretation
regarding compensation, hours, terms and conditions of
employment, employment status or discrimination, unless the
discrimination is related to the actual job responsibilities of
the employee or agreed to in writing by the employee;

(ii) Any discriminatory or otherwise aggrieved
application of unwritten policies or practices of his or her
employer;

(iii) Any specifically identified incident of harassment,
including repeated or continual disturbance, irritation or
annoyance of an employee that is contrary to the demeanor
expected by law, policy and profession, or favoritism,
including unfair treatment of an employee as demonstrated
by preferential, exceptional or advantageous treatment of
another similarly situated employee; or

(iv) Any action, policy or practice constituting a
substantial detriment to or interference with the effective job
performance of the employee, or the health and safety of the
employee.

(2) "Grievance" does not mean any pension matter or
other issue relating to public employees insurance in
accordance with article sixteen, chapter five of this code,
retirement or any other matter in which the authority to act is
not vested with the employer.

(h) "Grievant" means an employee or group of similarly
situated employees filing a grievance.

(i) "Party" and "parties" mean the grievant, employer and
the Director of the Division of Personnel for state
government employee grievances. The Division of Personnel
shall not be a party to grievances involving higher education
employees.

(j) "Representative" means any employee organization,
fellow employee, legal counselor or other person designated
by the grievant as the grievant's representative and may not
include a supervisor who evaluates the grievant.


(a) Time limits. --

(1) An employee shall file a grievance within the time
limits specified in this article.
(2) The specified time limits may be extended to a date certain by mutual written agreement, and shall be extended whenever a grievant is not working because of accident, sickness, death in the immediate family or other cause for which the grievant has approved leave from his or her employment.

(b) Default. --

(1) The grievant prevails by default if a required response is not made by the employer within the time limits established in this article, unless the employer is prevented from doing so directly as a result of injury, illness or a justified delay not caused by negligence or intent to delay the grievance process.

(2) Within ten days of the default, the grievant may file with the chief administrator a written notice of intent to proceed directly to the next level or to enforce the default. If the chief administrator objects to the default, then the chief administrator may request a hearing before an administrative law judge for the purpose of stating a defense to the default, as permitted by subdivision one of this subsection, or showing that the remedy requested by the prevailing grievant is contrary to law or contrary to proper and available remedies. In making a determination regarding the remedy, the administrative law judge shall determine whether the remedy is proper, available and not contrary to law.

(3) If the administrative law judge finds that the employer has a defense to the default as permitted by subdivision (1) of this subsection, or that the remedy is contrary to law or not proper or available at law, the administrative law judge may deny the default, or modify the remedy to be granted to comply with the law or otherwise make the grievant whole.
(c) *Defenses and limitations.* –

(1) *Untimeliness.* -- Any assertion by the employer that the filing of the grievance at level one was untimely shall be asserted by the employer at or before level two.

(2) *Back Pay.* -- A one-year statute of limitations applies to the recovery of back pay. In the case of a willful violation by the employer in which it can be shown by a preponderance of the evidence that the employer acted in bad faith in concealing the facts giving rise to the claim for back pay, an eighteen-month statute of limitations applies. Further, a grievant's right to back pay tolls from the time that the grievant has actual or constructive knowledge of his or her right to back pay.

(3) *Statutory defense.* -- If the employer intends to assert the application of any statute, policy, rule or written agreement as a defense at any level, then a copy of the materials shall be forwarded to the grievant and his or her representative.

(d) *Withdrawal and reinstatement of grievance.* -- An employee may withdraw a grievance at any time by filing a written notice of withdrawal with the chief administrator or the board. The grievance may not be reinstated by the grievant unless reinstatement is granted by the chief administrator or the board. If more than one employee is named as a grievant, the withdrawal of one employee does not prejudice the rights of any other employee named in the grievance.

(e) *Consolidation and Groups of Similarly Situated Employees.* --
(1) Grievances may be consolidated at any level by agreement of all parties, or at the discretion of the administrative law judge.

(2) Class actions are not permitted. However, a grievance may be filed by one or more employees on behalf of a group of similarly situated employees, but any similarly situated employee shall indicate in writing his or her intent to join the group of similarly situated employees. Only one employee filing a grievance on behalf of similarly situated employees shall be required to participate in the level one hearing required in section four of this article.

(f) Intervention. -- Upon a timely request, any employee may intervene and become a party to a grievance at any level when the employee demonstrates that the disposition of the action may substantially and adversely affect his or her rights or property and that his or her interest is not adequately represented by the existing parties.

(g) Representation. -- An employee may designate a representative who may be present at any step of the procedure as well as at any meeting that is held with the employee for the purpose of discussing or considering disciplinary action.

(h) Reprisal. -- No reprisal or retaliation of any kind may be taken by an employer against a grievant or any other participant in the grievance procedure by reason of his or her participation. Reprisal or retaliation constitutes a grievance, and any person held responsible is subject to disciplinary action for insubordination. Further, any supervisor or administrator responsible for a willful act of bad faith toward an employee or who intentionally works an employee out of classification may be subject to disciplinary action, including demotion or discharge.
(i) **Forms.** -- The board shall create the forms for filing grievances, giving notice, taking appeals, making reports and recommendations, and all other necessary documents provide them to chief administrators to make available to any employee upon request.

(j) **Discovery.** -- The parties are entitled to copies of all material submitted to the chief administrator or the administrative law judge by any party. All documents submitted become part of the record.

(k) **Conferences and Hearings.**

(1) **Impartiality.** -- The administrative law judge shall conduct all level three hearings in an impartial manner and shall ensure that all parties are accorded procedural and substantive due process.

(2) **Closed Conferences and Hearings.** -- All conferences and hearings shall be conducted in private. Hearings may be public at level three at the discretion of the administrative law judge.

(3) **Evidence.** -- All parties may present supportive or corroborative evidence and argument with respect to the grievance at a conference or hearing. Formal rules of evidence do not apply, but parties are bound by the rules of privilege recognized by law, and the rules and procedures established by the board.

(4) **Witnesses.** -- At level one, the chief administrator may call witnesses and may allow parties to call witnesses during a conference or hearing upon request. The parties have the right to call, examine and cross-examine witnesses during any hearing. Administrative law judges may issue subpoenas for witnesses, limit witnesses, administer oaths and may
exercise other powers granted by rule or law. No employee may be compelled to testify against himself or herself in a grievance hearing.

(5) Notice. -- Reasonable notice of a conference or hearing shall be sent at least five days prior to the hearing to all parties and their representatives and shall include the date, time and place of the hearing. If an employer causes a conference or hearing to be postponed without adequate notice to employees who are scheduled to appear during their normal work day, the employees may not suffer any loss in pay for work time lost.

(6) Location. -- All proceedings shall be at a convenient place accessible to all parties and the location of the level three hearing shall be set by the administrative law judge.

(7) Date and Time. -- Conferences and hearings shall be scheduled within the time frames established at a reasonable time of day in accommodation to the parties’ work schedules. Disagreements shall be decided by the board or the administrative law judge.

(8) Record. -- Conferences are not required to be recorded, but all evidence submitted and the decision become part of the record. All the testimony and evidence at a hearing shall be recorded by mechanical means, and a copy of the recording provided to any party upon request. The board is responsible for paying for and promptly providing a certified transcript of a hearing to a requesting party or the court for a mandamus or appellate proceeding.

(1) Grievance decisions. –

(1) Prior to a decision, any party may propose findings of fact and conclusions of law.
(2) Decisions rendered at all levels of the grievance procedure shall be dated, in writing, setting forth the decision or decisions and the reasons for the decision, and transmitted to the board, the employer and the grievant within the time limits prescribed. If the grievant is denied the relief sought, the decision shall include the procedure for the next level of appeal for the grievant.

(m) Preparation time. –

(1) The grievance shall be processed during regular working hours with minimal interference with the normal operations of the employer and schedule of the employee.

(2) The grievant, witnesses and an employee representative shall be granted reasonable and necessary time off during working hours for grievance proceedings without loss of pay and without charge to annual or compensatory leave credits.

(3) In addition to actual time spent in grievance conferences and hearings, the grievant and an employee representative shall be granted time off during working hours, not to exceed four hours per grievance, for the preparation of the grievance without loss of pay and without charge to annual or compensatory leave credits. However, the first responsibility of any employee is the work assigned to the employee. An employee may not allow grievance preparation and representation activities to seriously affect the overall productivity of the employee.

(4) The grievant and an employee representative shall have access to the employer's equipment for purposes of preparing grievance documents subject to the reasonable rules of the employer governing the use of the equipment for non-work purposes.
(5) Disagreements regarding preparation time shall be decided by the board or the presiding administrative law judge.

(n) Grievance files. –

(1) All grievance forms and reports shall be kept in a file separate from the personnel file of the employee and may not become a part of the personnel file, but shall remain confidential except by mutual written agreement of the parties.

(2) The grievant may file a written request to have the grievant's identity removed from any files kept by the employer one year following the conclusion of the grievance.

(o) Number of Grievances. -- The number of grievances filed against an employer by an employee is not, per se, an indication of the employer's or the employee's job performance.

(p) Procedures and Rules. -- The board shall prescribe rules and procedures in compliance with this article, article three of this chapter and the State Administrative Procedures Act under chapter twenty-nine-a of this code for all matters relating to the grievance procedure.

§6C-2-4. Grievance procedural levels.

(a) Level one: Chief Administrator. –

(1) Within fifteen days following the occurrence of the event upon which the grievance is based, or within fifteen days of the date upon which the event became known to the employee, or within fifteen days of the most recent occurrence of a continuing practice giving rise to a grievance,
an employee may file a written grievance with the chief administrator stating the nature of the grievance and the relief requested and request either a conference or a hearing. The employee shall also file a copy of the grievance with the board. State government employees shall further file a copy of the grievance with the Director of the Division of Personnel, who may participate at any level in person or by a designee.

(2) The chief administrator shall hold the conference or hearing, as requested by the grievant, within ten days of receiving the grievance and issue a written decision within fifteen days of the conference or hearing.

(3) An employee may proceed directly to level three upon the agreement of the employee and the chief administrator or when discharged, suspended without pay or demoted or reclassified resulting in a loss of compensation or benefits.

(b) Level two: Alternative dispute resolution. –

(1) Within ten days of receiving an adverse written decision at level one, the grievant shall file a written request for mediation, private mediation or mediation-arbitration with the board if the grievant desires to continue the grievance process.

(A) Mediation. -- The board shall schedule the mediation between the parties within twenty days of the request. Mediation shall be conducted by an administrative law judge pursuant to standard mediation practices and board procedures at no cost to the parties. Parties may be represented and shall have the authority to resolve the dispute. Agreements reached through mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.
(B) Private Mediation. -- The parties may agree in writing to retain their choice of a private mediator and share the cost. The mediator shall schedule the mediation within twenty days of the written request and shall follow standard mediation practices and any applicable board procedures. Parties may be represented and shall have the authority to resolve the dispute. Agreements reached through mediation shall be documented in writing within fifteen days. Agreements are binding and enforceable in this state by a writ of mandamus.

(C) Mediation-arbitration. -- The parties may agree in writing to participate in mediation-arbitration. The board shall schedule the mediation-arbitration between the parties within twenty days of the request. Mediation-arbitration shall be conducted by an administrative law judge pursuant to standard mediation and arbitration practices and board procedures, at no cost to the parties. In the event the mediation does not result in a resolution, the mediator may become an arbitrator and proceed to decide the matter. The parties may be represented and may resolve the dispute. Agreements reached through mediation and decisions issued through arbitration are to be documented in writing within fifteen days, and are binding and enforceable in this state by a writ of mandamus.

(2) Neutral Evaluation. -- Within fifteen days of the conclusion of an unsuccessful mediation or mediation-arbitration, the administrative law judge serving as the mediator or mediator-arbitrator may provide a written summary to the parties as a neutral evaluator stating the issues presented, and issue a scheduling and discovery order that is binding upon the parties in preparation for level three.

(c) Level three: Adjudication. –
(1) Within ten days of receiving a written report stating that alternative dispute resolution at level two was unsuccessful, the grievant may file a written appeal with the employer and the board requesting a hearing and adjudication on the grievance. The administrative law judge shall schedule the hearing, and any other proceedings or deadlines, within a reasonable time in consultation with the parties. State government employees shall also serve a copy of the appeal upon the Director of the Division of Personnel, or his or her designee, who may appear at the hearing and submit oral or written evidence upon matters at issue.

(2) Both the employer and the employee shall at all times act in good faith and make every possible effort to resolve disputes at the lowest level of the grievance procedure. The administrative law judge may make a determination of bad faith and in extreme instances allocate the cost of the hearing to the party found to be acting in bad faith. The allocation of costs shall be based on the relative ability of the party to pay the costs.

(3) Within thirty days following the hearing, the administrative law judge shall render a decision in writing to all parties setting forth findings of fact and conclusions of law on the issues submitted.

§6C-2-5. Enforcement and appeal.

(a) The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court of Kanawha County.

(b) A party may appeal the decision of the administrative law judge on the grounds that the decision:
(1) Is contrary to law or a lawfully adopted rule or written policy of the employer;

(2) Exceeds the administrative law judge’s statutory authority;

(3) Is the result of fraud or deceit;

(4) Is clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(5) Is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) A party shall file the appeal in the circuit court of Kanawha County within thirty days of receipt of the administrative law judge’s decision. The decision of the administrative law judge is not automatically stayed upon the filing of an appeal, but a stay may be granted by the circuit court upon a separate motion for a stay.

(d) The court shall review the entire record that was before the administrative law judge, and the court may hear oral arguments and require written briefs. The court may reverse, vacate or modify the decision of the administrative law judge, or may remand the grievance to the administrative law judge or the chief administrator for further proceedings.

§6C-2-6. Allocation of expenses and attorney’s fees.

(a) Any expenses incurred relative to the grievance procedure at levels one, two or three shall be borne by the party incurring the expenses.

(b) In the event a grievant or employer appeals an adverse level three decision to the circuit court of Kanawha County,
or an adverse circuit court decision to the Supreme Court of Appeals of West Virginia, and the grievant substantially prevails upon the appeal, the grievant may recover from the employer court costs and reasonable attorney’s fees for the appeal to be set by the court.

§6C-2-7. Mandamus proceeding.

Any employer failing to comply with the provisions of this article may be compelled to do so by a mandamus proceeding and may be liable to a prevailing party for court costs and reasonable attorney’s fees to be set by the court.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.

§6C-3-1. West Virginia Public Employees Grievance Board.

(a) Effective the thirtieth day of June, two thousand seven, the Education and State Employees Grievance Board, and the employment of the hearing examiners and administrative law judges under the board, terminate.

(b) Effective the first day of July, two thousand seven, the West Virginia Public Employees Grievance Board is created as an independent entity under the Department of Administration and all references to the Education and State Employees Grievance Board in the code shall be considered to refer to the West Virginia Public Employees Grievance Board.
(c) On or before the first day of July, two thousand seven, the Governor, by and with the advice and consent of the Senate, shall appoint the following five members to the board for the following terms:

1. One person representing the largest labor organization in the state for a term of three years;

2. One person representing an education employee organization in the state for a term of two years;

3. One employer representative from the executive branch for a term of two years;

4. One employer representative from secondary or higher education for a term of three years; and

5. One citizen member, who is not a current employee, employer or a representative of employees in a workplace in the public, educational or higher educational sector of this state, for a term of one year.

(d) After the initial appointment, the board term shall be three years.

(e) No member may serve more than two consecutive full terms and any member having served two consecutive full terms may not be appointed for one year after completion of his or her second full term. A member shall continue to serve until his or her successor has been appointed and qualified.

(f) A vacancy on the board shall be filled by the Governor by appointment of a like member for the unexpired term of the member whose office is vacant.
(g) The membership of the board shall represent each congressional district, with no more than two members from any one district and no more than three members may be from the same political party.

(h) Each member of the board, at the time of his or her appointment, must have been a resident of this state for a period of not less than one year immediately preceding the appointment and each member of the board shall remain a resident of this state during the appointment term.

(i) The Governor may remove any member from the board for neglect of duty, incompetency, criminal convictions or official misconduct.

(j) Any member of the board immediately and automatically forfeits his or her membership if he or she is convicted of a felony under the laws of any state or the United States, or becomes a nonresident of this state.

(k) The board shall hold at least four meetings per year. 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.

(l) 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.

(m) A majority of the members of the board constitute a quorum.

(n) Each member of the board is entitled to receive compensation and expense reimbursement as is accorded legislators in the performance of their duties.
§6C-3-2. Powers and duties of the board.

The board shall:

(1) Maintain jurisdiction over procedural matters in the grievance process;

(2) Employ competent administrative law judges and a chief administrative law judge and pay them commensurately with other administrative law judges in the state, who shall be:

(A) Residents of the State of West Virginia;

(B) Members in good standing of the West Virginia State Bar; and

(C) Persons who have knowledge and legal experience regarding public and education employment law and alternative dispute resolution;

(3) Provide suitable office space for the board and the administrative law judges separate from any workplace in the public, educational and higher educational sectors, so that the administrative law judges are accessible statewide;

(4) Hire, discharge, set the job requirements for and fix the compensation of the director, employees and administrative law judges, who serve at the will and pleasure of the board, necessary to enforce the provisions of this article and article two of this chapter;

(5) Prepare and submit an annual budget;

(6) Establish and provide all forms necessary for the grievance process and make them easily accessible;
(7) Establish procedures to obtain and maintain records, outcomes and costs at each level of the grievance process;

(8) Keep accurate and complete records of its proceedings and hearings and certify the records as may be appropriate;

(9) Evaluate, on an annual basis, the grievance process, including written comment from employers, employees and employee organizations that participate in the process;

(10) Submit an annual report to the Joint Committee on Government and Finance, the Legislature and the Governor that includes a compilation of all data received regarding outcomes and costs at each level of the grievance process;

(11) File a mandamus proceeding against any employer failing to comply with the reporting requirements of this article; and

(12) Take all other actions necessary and proper to effectuate the purposes of this article.

§6C-3-3. Data collection and reporting requirements.

(a) Each employer involved in a grievance matter shall maintain the forms and all records created in the grievance process, and shall provide this information to the board in the form and manner prescribed by the board.

(b) The board shall obtain and maintain all records of grievance matters.

(c) The board shall annually report to the Joint Committee on Government and Finance, the Legislature and the Governor. The report shall contain the following:

(1) An overview of grievance-related issues;
(2) The number of grievances against each employer;

(3) Identification of each grievance by type of grievance, level of resolution and cost of the grievance, including the estimated cost of employee time to handle the grievance and actual cost of any legal time or damages paid in the resolution of the grievance;

(4) The number and type of grievances granted, denied or resolved by other means, including informal resolutions and alternative dispute resolution, and the actual or estimated cost of handling the grievance at each level of the grievance process;

(5) Any legislative recommendations for changes to the grievance process as a result of the data collected; and

(6) The caseload of each administrative law judge, the type of grievance, the number of grievances resolved and the number of decisions issued.

(d) Nothing contained in the annual report may breach the confidentiality of a party to the dispute, nor may any matter be disclosed if the disclosure may violate any provision of law.

§6C-3-4. Rule-making authority.

(a) The rules established by the Education and State Employees Grievance Board in effect on the effective date of this article that are consistent with the provisions of this article and article two of this chapter remain in effect until they are amended, modified or repealed.

(b) The board may adopt, modify, amend and repeal procedural rules promulgated in accordance with article three, chapter twenty-nine-a of this code, necessary to effectuate the provisions of this article and article two of this chapter including, but not limited to, procedures to create and
§6C-3-5. Continuation of the West Virginia Public Employees Grievance Board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Public Employees Grievance Board shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished.

§6C-3-6. Review of the grievance procedure.

On or before the first day of January, two thousand ten, the Joint Committee on Government and Finance shall review the grievance procedure and the board, evaluate its usefulness and make recommendations concerning its continuation or termination.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.


The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine all:
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(1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten of this chapter;

(2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all taxes administered in accordance with the provisions of article ten of this chapter;

(3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing to renew any license or imposing any civil money penalty for violating the provisions of any licensing law administered by the Tax Commissioner;

(4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of article ten of this chapter;

(5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to article two, chapter six-c of this code; and

(6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.
(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of article two, chapter six-c of this code, except that dismissal for the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.


Each governing board separately has the power and duty to:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction, except the administratively linked community and technical colleges which retain an institutional board of advisors shall develop their master plans subject to the provisions of section one, article six of this chapter.
(1) The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors, or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the commission or council, as appropriate.

(2) Each master plan shall include, but not be limited to, the following:

A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;

A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

Document the involvement of the commission or council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary;

(c) Prescribe for the institutions under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the institutions under its jurisdiction, which relates directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;
(e) Consider, revise and submit to the commission or council, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institutional compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institutions under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(g) Ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;

(h) Subject to the provisions of article one-b of this chapter, approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the Commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;
(i) Use faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;

(j) Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(l) Solicit and use or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;

(m) Appoint a president for the institutions under its jurisdiction subject to the provisions of section six, article one-b of this chapter;

(n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;

(o) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(p) Submit to the commission or council, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

(q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on
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Campuses of the public institution of higher education or at off-campus locations in the institution’s responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

(r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

(s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the provisions of this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing boards of Marshall University or West Virginia University as they relate to the state institutions of higher education known as Marshall University and West Virginia University;

(t) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for acceptance of advanced placement credit for their respective institutions. Individual departments at institutions of higher education may, upon approval of the institutional faculty senate, require higher scores on the advanced placement test than scores designated by the appropriate governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(u) Consult, cooperate and work with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial
management and expenditure of special revenue and appropriated state funds at the institutions under its jurisdiction that ensures that properly submitted requests for payment be paid on or before due date but, in any event, within fifteen days of receipt in the State Auditor's office;

(v) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms which shall be submitted to the respective governing board and the Department of Finance and Administration;

(w) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated;

(x) Transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated;

(y) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the Attorney General for legal assistance and representation as provided by law;
(z) For each governing board which has under its jurisdiction an administratively linked community and technical college or a regional campus offering community and technical college education programs, create within the administrative structure of its governing board a subcommittee for community and technical college education. The subcommittee shall have at least four members, one of whom is the chairperson of the board of advisors of the community and technical college or, in the case of the Governing Board of West Virginia University, both the member representing the community and technical college and the member representing the regional campus; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

(a) For any probationary faculty the president or other administrative head of each institution shall give written notice concerning retention or nonretention for the ensuing academic year not later than the first day of March.

(b) If a request is made by the probationary faculty member not retained, the president or other administrative head of the institution shall inform the probationary faculty member by certified mail within ten days of the reasons for nonretention. Any probationary faculty member who desires to appeal the decision may proceed to level three of the grievance procedure established in article two, chapter six-c of this code. If the administrative law judge decides that the reasons for nonretention are arbitrary or capricious or without a factual basis, the faculty member shall be retained for the ensuing academic year.
The term "probationary faculty member" shall be defined according to rules promulgated by the governing boards. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded them by other rules and other provisions of law.

CHAPTER 21. LABOR.

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-4. Employee's right of action against employer.

(a) Any employee whose compensation is at a rate that is in violation of section three of this article has the right to file a grievance pursuant to the provisions of article two, chapter six-c of this code.

(b) No agreement for compensation at a rate of less than the rate to which the employee is entitled under this article is a defense to any action under this article.

(c) The rights and procedures provided under this section are subject to the provisions of the rules promulgated by the Equal Pay Commission in accordance with section six of this article.

(d) Except as otherwise provided in subsection (d), section six of this article, the provisions of this section shall not become effective until the Legislature approves for promulgation the rules proposed by the Equal Pay Commission under the provisions of subsection (c) of said section.
ARTICLE 7. ENVIRONMENTAL RESOURCES.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person is eligible for appointment as an oil and gas inspector or supervising inspector unless, at the time of his or her probationary appointment, the person: (1) Is a citizen of West Virginia, in good health and of good character, reputation and temperate habits; (2) has had at least six years' actual relevant experience in the oil and gas industry: Provided, That not exceeding three years of the experience shall be satisfied by any combination of: (i) A bachelor of science degree in science or engineering which shall be considered the equivalent of three years' actual relevant experience in the oil and gas industry; (ii) an associate degree in petroleum technology which shall be considered the equivalent of two years actual relevant experience in the oil and gas industry; and (iii) actual relevant environmental experience including, without limitation, experience in wastewater, solid waste or reclamation each full year of which shall be considered as a year of actual relevant experience in the oil and gas industry; and (3) has good theoretical and practical knowledge of oil and gas drilling and production methods, practices and techniques, sound safety practices and applicable mining laws.

(b) In order to qualify for appointment as an oil and gas inspector or supervising inspector, an eligible applicant shall submit to a written and oral examination by the Oil and Gas Inspectors' Examining Board and shall furnish any evidence of good health, character and other facts establishing eligibility required by the board. If the board finds after investigation and examination that an applicant: (1) Is eligible for appointment; and (2) has passed all written and oral examinations, the board shall add the applicant's name
and grade to the register of qualified eligible candidates and
certify its action to the director of the Division of
Environmental Protection. No candidate's name may remain
on the register for more than three years without requalifying.

(c) Within the limits provided by law, the salary of each
inspector and of the supervising inspector shall be fixed by
the director and the Oil and Gas Inspectors' Examining Board
may make recommendations for salary determinations. In
fixing salaries of the oil and gas inspectors and of the
supervising inspector, the director shall consider ability,
performance of duty and experience. Inspectors and
supervising inspectors are entitled to mileage expense
reimbursement at the rate established for in-state travel of
public employees, in the Governor's travel rules, as
administered by the Department of Administration. No
reimbursement for traveling expenses may be made except
upon an itemized account of the expenses submitted by the
inspector or supervising inspector, as the case may be, who
shall verify, upon oath, that the expenses were actually
incurred in the discharge of official duties.

(d) (1) For grievances concerning matters other than
suspension or dismissal, inspectors may file written
grievances in accordance with the procedures set forth in
article two, chapter six-c of this code. For a level one
grievance, the inspector shall file the grievance with the
supervising inspector. For a level two grievance, the
inspector shall file the grievance with the chief of the Office
of Oil and Gas.

(2) An inspector or the supervising inspector, after having
received a permanent appointment, shall be suspended or
dismissed by the chief of the Office of Oil and Gas only for
physical or mental impairment, incompetency, neglect of
duty, drunkenness, malfeasance in office or other good cause.

(3) Not less than twenty reputable citizens engaged in oil
and gas drilling and production operations in the state may
petition the chief of the office of oil and gas for the dismissal
of an inspector or the supervising inspector. If the petition is
verified by at least one of the petitioners, based on actual
knowledge of the affiant, and alleges facts which, if true,
warrant the removal of the inspector or supervising inspector,
the chief shall cause an investigation of the facts to be made.
If, after investigation, the chief finds that there is substantial
evidence which, if true, warrants dismissal of the inspector or
supervising inspector, the chief shall bring the petition before
the Oil and Gas Inspectors' Examining Board requesting
dismissal of the inspector or supervising inspector.

(4) A level three grievance is a hearing before the board
to consider the appeal of a level two grievance, the appeal of
suspension or dismissal by the chief or a citizens’ petition
seeking dismissal of an inspector or supervising inspector.
For any level three grievance, the chief may not preside over
the hearing and may not vote. The remaining members of the
board shall select a member of the board to serve as acting
chair, who may not vote.

(5) An appeal of an inspector from a suspension or
dismissal by the chief may be filed by the end of the tenth
day following the suspension or dismissal notwithstanding
the time limits and requirements set forth in article two,
chapter six-c of this code.

(6) On receipt of an appeal of a level two grievance, an
appeal of suspension or dismissal by the chief or a citizens’
petition seeking dismissal of an inspector or the supervising
inspector, the Oil and Gas Inspectors' Examining Board shall
promptly notify the inspector or supervising inspector, as the
case may be, to appear before it at a time and place
designated in the notice, which time shall be not less than
fifteen days nor more than thirty days thereafter
notwithstanding the time limits and requirements set forth in
article two, chapter six-c of this code. There shall be attached
to the copy of the notice served upon the inspector or
101 supervising inspector a copy of the appeal or petition filed with the board.

103 (7) At the time and place designated in the notice, the Oil and Gas Inspectors' Examining Board shall conduct a level three grievance proceeding in which the testimony shall be recorded to enable a transcript to be prepared for any further appeal. The board shall hear all evidence offered in support of the appeal or petition and on behalf of the inspector or supervising inspector. Each witness shall be sworn and a transcript shall be made of all evidence taken and proceedings had at any hearing. No continuance may be granted except for good cause shown.

108 (8) The acting chair of the board may administer oaths and subpoena witnesses.

115 (9) An inspector or supervising inspector who willfully refuses or fails to appear before the board, or having appeared, refuses to answer under oath any relevant question on the ground that the inspector's testimony or answer might incriminate the inspector, or refuses to accept a grant of immunity from prosecution on account of any relevant matter about which the inspector may be asked to testify at the hearing before the board, forfeits the inspector's position notwithstanding any provisions to the contrary in article two, chapter six-c of this code.

125 (10) If, after hearing, the Oil and Gas Inspectors' Examining Board finds that the inspector or supervising inspector should be suspended, dismissed or otherwise disciplined, it shall enter an order to that effect. An appeal of the decision of the board shall proceed as a level three proceeding under the provisions of article two, chapter six-c of this code.
CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

(a) Notwithstanding any provision of this code to the contrary, the authority, when employing correctional officers to complete the approved staffing plan of a regional jail completed after the effective date of this section, shall employ any correctional officer applying for a position as a correctional officer at a regional jail who was employed in good standing at a county jail facility in the region at the time of its closing or at a prison facility operated by the Division of Corrections: Provided, That the regional jail is located within the same region as the prison facility that was closed due to relocation of the prison facility to a site outside the region. Only those correctional officers who are employees in good standing at the time the prison facility is closed are eligible for transfer under the provisions of this subsection. Correctional officers, employed under the provisions of this subsection, shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code. All correctional officers employed under this subsection shall also be covered by the policies and procedures of the West Virginia Public Employees Grievance Board, created under article two, chapter six-c of this code and the classified-exempt service protection policies of the Division of Personnel.

(b) The authority shall, when employing correctional officers to fill positions within the approved staffing plan of

*Clerk's Note: This section was also amended by H.B. 2253 (Chapter 51), which passed subsequent to this act.
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27 any regional jail, employ any correctional officer applying
28 for a position as a correctional officer at a regional jail who
29 was previously employed as a correctional officer in good
30 standing at any local jail facility: Provided, That the local jail
31 facility is located within the same region as the regional jail
32 at the time of the local jail facility's closing or reduction in
33 size and was reduced in size or closed prior to or due to the
34 completion of the regional jail within the region. Correctional officers, employed under the provisions of this
35 subsection, shall be employed at a salary and with benefits
36 consistent with the approved plan of compensation of the
37 Division of Personnel, created under section five, article six,
38 chapter twenty-nine of this code. Only those county
39 correctional officers who are employees in good standing at
40 the time the local jail facility is closed are eligible for transfer
41 under the provisions of this subsection. All correctional
42 officers employed under this subsection shall also be covered
43 by the policies and procedures of the West Virginia Public
44 Employees Grievance Board created under article two,
45 chapter five-c of this code and the classified-exempt service
46 protection of the Division of Personnel.

CHAPTER 33. INSURANCE.

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE
INDIVIDUALS ACT.


1 (a) There is continued within the department a body
corporate and politic to be known as the West Virginia
Health Insurance Plan which shall be considered to be an
instrumentality of the state and a public corporation. The
plan shall have perpetual existence and any change in the
name or composition of the plan shall in no way impair the
obligations of any contracts existing under this article.

8 (b) The plan shall operate subject to the supervision and
control of the board. The board shall consist of the
commissioner or his or her designated representative, who shall serve as an ex officio member of the board and shall be its chairperson, and six members appointed by the Governor. At least two board members shall be individuals, or the parent, spouse or child of individuals, reasonably expected to qualify for coverage by the plan. At least two board members shall be representatives of insurers. At least one board member shall be a hospital administrator. A majority of the board shall be composed of individuals who are not representatives of insurers or health care providers.

(c) Board members shall serve for a term of three years. A board member's term shall continue until his or her successor is appointed.

(d) Vacancies in the board shall be filled by the Governor. Board members may be removed by the Governor for cause.

(e) Board members shall not be compensated in their capacity as board members but shall be reimbursed for reasonable expenses incurred in the necessary performance of their duties.

(f) The board shall submit to the commissioner a plan of operation for the plan and any amendments to the plan necessary or suitable to assure the fair, reasonable and equitable administration of the plan. The plan of operation shall become effective upon approval in writing by the commissioner consistent with the date on which the coverage under this article must be made available. If the board fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate any rules necessary or advisable to effectuate the provisions of this section. The rules shall continue in force until modified by the commissioner or superseded by a plan
of operation submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the plan: Provided, That the plan shall be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal health care tax credit established by the federal Trade Adjustment Assistance Reform Act of 2002 (Section 35 of the Internal Revenue Code of 1986);

(2) Establish procedures for selecting an administrator in accordance with section six of this article;

(3) Establish procedures for the handling, accounting and auditing of assets, moneys and claims of the plan and the plan administrator;

(4) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment;

(5) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three years; and

(6) Provide for other matters that are necessary and proper for the execution of the board's powers, duties and obligations under this article.

(h) The plan shall have the general powers and authority granted under the laws of this state to health insurers and, in addition thereto, the specific authority to:
(1) Enter into contracts that are necessary or proper to carry out the provisions and purposes of this article, including the authority, with the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions: Provided, That 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 executed by or on behalf of the plan under this article;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the plan;

(3) Take any necessary legal action:

(A) To avoid the payment of improper claims against the plan or the coverage provided by or through the plan;

(B) To recover any amounts erroneously or improperly paid by the plan;

(C) To recover any amounts paid by the plan as a result of mistake of fact or law; or

(D) To recover other amounts due the plan;

(4) Establish and modify, from time to time, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan. Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;
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(5) Issue policies of insurance in accordance with the requirements of this article;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design and any other function within the authority of the pool;

(7) Borrow money to effect the purposes of the plan. Any notes or other evidence of indebtedness of the plan not in default shall be legal investments for insurers and may be carried as admitted assets;

(8) Establish rules, conditions and procedures for reinsuring risks of participating insurers desiring to issue plan coverages in their own name. Provision of reinsurance shall not subject the plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;

(9) Employ and fix the compensation of employees, including an executive director of the plan. The executive director shall have overall management responsibility for the plan and is exempt from the classified service and not subject to the procedures and protections provided by article two, chapter six-c of this code and article six, chapter twenty-nine of this code;

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance producers and to the general public;

(11) Provide for reinsurance of risks incurred by the plan;

(12) Issue additional types of health insurance policies to provide optional coverages, including medicare supplemental insurance;

(13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization
review and individual case management for the purpose of making the benefit plan more cost effective;

(14) Design, use, contract or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements: Provided, That all contracts with preferred provider organizations, health maintenance organizations, other network providers or other health care providers shall provide that plan participants are not personally liable for the cost of services covered by the plan other than applicable deductibles or copayments, including any balance claimed by the provider to be owed as being the difference between that provider’s charge or charges and the amount payable by the plan; and

(15) Adopt bylaws, policies and procedures that are necessary or convenient for the implementation of this article and the operation of the plan.

(i) The board shall make an annual report to the Governor which shall also be filed with the Legislature. The report shall summarize the activities of the plan in the preceding calendar year, including the net written and earned premiums, plan enrollment, the expense of administration and the paid and incurred losses.

(j) Neither the board nor its employees are liable for any obligations of the plan. No member or employee of the board shall be liable and no cause of action of any nature may arise against them for any act or omission related to the performance of their powers and duties under this article unless the act or omission constitutes willful or wanton misconduct. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.
(a) Notwithstanding any provision of this code to the contrary, the division, when employing any persons to complete the approved staffing plan of any of its juvenile detention or corrections facilities, shall employ any person otherwise qualified who applies for a position at the juvenile detention or corrections facility who was also employed in good standing at a county or local jail facility, at the time of its closing, that was closed due to the completion of a regional jail.

(b) All persons employed at a juvenile detention or corrections facility shall be employed at a salary and with benefits consistent with the approved plan of compensation of the Division of Personnel, created under section five, article six, chapter twenty-nine of this code; all employees shall also be covered by the policies and procedures of the West Virginia Public Employees Grievance Board, created under article two, chapter six-c of this code and the classified service protection policies of the Division of Personnel.
Public Employees Insurance Agency; expanding insurance coverage eligibility to include certain substitute employees; expanding coverage to include certain procedures; clarifying certain eligibility provision; requiring continued insurance coverage for Medicare-eligible retired employees; modifying treatment of reserve fund balances; modifying treatment of certain portions of required employer annual payments; modifying certain employer annual required contribution provisions; making technical corrections; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

That §5-16-2, §5-16-5, §5-16-7 and §5-16-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-16D-1 and §5-16D-6 of said code be amended and reenacted; and that §18A-1-1 of said code be amended and reenacted, all to read as follows:

Chapter
5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.
§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.
§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.
§5-16-25. Reserve fund.
§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

1. "Agency" means the Public Employees Insurance Agency created by this article.

2. "Director" means the Director of the Public Employees Insurance Agency created by this article.

3. "Employee" means any person, including an elected officer, who works regularly full time in the service of the State of West Virginia and, for the purpose of this article only, the term "employee" also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code; and any person who works as a long-term substitute as defined in section one, article one, chapter one, article one, chapter...
Provided, That a long-term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term, and until the end of that instructional term, is eligible for the benefits provided in this article until the first day of September following that instructional term: Provided, however, That a long-term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after the first day of January, one thousand nine hundred ninety-four, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an "employee" during the term of office of the elected member: Provided further, That the elected member shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after the first day of July, one thousand nine hundred ninety-seven, a person shall be considered an "employee" if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the "employee" for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(4) "Employer" means the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality
supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; and a combined city-county health department created pursuant to article two, chapter sixteen of this code. Any matters of doubt as to who is an "employer" within the meaning of this article shall be decided by the director. The term "employer" does not include within its meaning the National Guard.

(5) "Finance board" means the Public Employees Insurance Agency finance board created by this article.

(6) "Person" means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) "Retired employee" means an employee of the state who retired after the twenty-ninth day of April, one thousand nine hundred seventy-one, and an employee of the University of West Virginia Board of Trustees or the Board of Directors of the State College System or a county board of education who retires on or after the twenty-first day of April, one thousand nine hundred seventy-two, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer: Provided, That for the purposes of this article, the employees who are not
covered by a state retirement system but who are covered by
a state-approved or a state-contracted retirement system shall,
in the case of education employees, meet the minimum
eligibility requirements of the State Teachers Retirement
System and in all other cases, meet the minimum eligibility
requirements of the Public Employees Retirement System.

§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
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32 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; utilization 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 percentages of premium between
employers and employees, including the amounts of any
subsidization of retired employee benefits. 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, 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: Provided, however, 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: Provided further, That the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

(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.

*§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

(a) The agency shall establish a group hospital and surgical insurance plan or plans, a group prescription drug insurance plan or plans, a group major medical insurance plan or plans and a group life and accidental death insurance plan or plans for those employees herein made eligible and establish and promulgate rules for the administration of these plans, subject to the limitations contained in this article. Those plans shall include:

(1) Coverages and benefits for X-ray and laboratory services in connection with mammograms when medically appropriate and consistent with current guidelines from the United States Preventive Services Task Force; pap smears, either conventional or liquid-based cytology, whichever is medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer

*Clerk's Note: This section was also amended by S.B. 18 (Chapter 133), which passed prior to this act.*
screening or diagnostic services on a woman age eighteen or over;

(2) Annual checkups for prostate cancer in men age fifty and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That a plan may not deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other things, medicines, medical equipment, prosthetic appliances, and any other inpatient and outpatient services and expenses considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, "serious mental illness" means an illness included in the American Psychiatric Association’s diagnostic and statistical
manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, "serious mental illness" also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate actuarially that its total anticipated costs for the treatment of mental illness for any plan will exceed or have exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever cost-containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.
(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.

(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. In the event that a Medicare-specific plan would no longer be available or advantageous for the agency and the retirees, the retirees shall remain eligible for coverage through the agency.
§5-16-25. Reserve fund.

Upon the effective date of this section, the finance board shall establish and maintain a reserve fund for the purposes of offsetting unanticipated claim losses in any fiscal year. Beginning with the fiscal year two thousand two plan and for each succeeding fiscal year plan, the finance board shall transfer ten percent of the projected total plan costs for that year into the reserve fund, which is to be certified by the actuary and included in the final, approved financial plan submitted to the Governor and Legislature in accordance with the provisions of this article. Any moneys saved in a plan year shall be transferred into the reserve fund. At the close of any fiscal year in which the balance in the reserve fund exceeds the recommended reserve amount by fifteen percent, the executive director shall transfer that amount to the West Virginia Retiree Health Benefit Trust Fund created in section two, article sixteen-d of this chapter.

ARTICLE 16D. WEST VIRGINIA RETIREMENT HEALTH BENEFIT TRUST FUND.

§5-16D-1. Definitions.

§5-16D-6. Mandatory employer contributions.

§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
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 payment” means the annual amount paid by employers 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 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.

(s) “Obligations” means the administrative expenses of the fund and the cost of covered health care expenses incurred on behalf of fund beneficiaries.

(t) “Other post-employment benefits” or “retiree post-employment health care benefits” means those benefits as addressed by governmental accounting standards board statement no. 43 or any subsequent governmental standards board statement that may be applicable to the fund.

(u) “Plan for other post-employment benefits” means the fiscal funding plan for retiree post-employment health care benefits as it relates to governmental accounting standards board statement no. 43 or any subsequent governmental accounting standards board statements that may be applicable to the fund.
(v) “Retiree” means retired employee as defined by section two, article sixteen of this chapter.

(w) “Retirement system” or “system” means the West Virginia Consolidated Public Retirement Board created and established by article ten of this chapter and includes any retirement systems or funds administered or overseen by the Consolidated Public Retirement Board.

(x) “Unfunded actuarial accrued liability” means for any actuarial valuation the excess of the actuarial accrued liability over the actuarial value of the assets of the fund under an actuarial cost method used by the fund for funding purposes.

§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 payment. In the board’s annual apportionment of the annual required contribution, any amounts of the minimum annual employer payment apportioned to reduce the amortized unfunded actuarial accrued liability shall not be treated as premium by the board in the finance plan but,
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rather, shall be treated as contributions to prefund other post-
employment benefits.

(d) Employers shall make annual contributions to the 
fund in, at least, the amount of the minimum annual employer 
payment rates established by the board.

(e) The Public Employees Insurance Agency shall bill 
each employer for the employer annual required contribution 
and the included minimum annual employer payment. The 
Public Employees Insurance Agency shall annually collect 
the minimum annual employer payment. The Public 
Employees Insurance Agency shall, in addition to the 
minimum annual employer 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.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 1. GENERAL PROVISIONS.


The definitions contained in section one, article one, 
chapter eighteen of this code apply to this chapter. In 
addition, the following words used in this chapter and in any 
proceedings pursuant to this chapter shall, unless the context 
clearly indicates a different meaning, be construed as 
follows:

(a) "School personnel" means all personnel employed by 
a county board whether employed on a regular full-time 
basis, an hourly basis or otherwise. School personnel shall be

*CLERK’S NOTE: This section was also amended by H.B. 2189 (Chapter 86) which passed 
subsequent to this act.
comprised of two categories: Professional personnel and service personnel;

(b) "Professional personnel" means persons who meet the certification requirements of the state, licensing requirements of the state or both and includes the professional educator and other professional employees;

(c) "Professional educator" has the same meaning as "teacher" as defined in section one, article one, chapter eighteen of this code. Professional educators shall be classified as:

(1) "Classroom teacher" means a professional educator who has direct instructional or counseling relationship with pupils, spending the majority of his or her time in this capacity;

(2) "Principal" means a professional educator who, as agent of the county board, has responsibility for the supervision, management and control of a school or schools within the guidelines established by the county board. The major area of the responsibility shall be the general supervision of all the schools and all school activities involving pupils, teachers and other school personnel;

(3) "Supervisor" means a professional educator who, whether by this or other appropriate title, is responsible for working primarily in the field with professional and other personnel in instructional and other school improvement; and

(4) "Central office administrator" means a superintendent, associate superintendent, assistant superintendent and other professional educators, whether by these or other appropriate titles, who are charged with the administering and supervising of the whole or some assigned part of the total program of the countywide school system;
(d) "Other professional employee" means that person from another profession who is properly licensed and is employed to serve the public schools and includes a registered professional nurse, licensed by the West Virginia Board of Examiners for Registered Professional Nurses and employed by a county board, who has completed either a two-year (sixty-four semester hours) or a three-year (ninety-six semester hours) nursing program;

(e) "Service personnel" means those who serve the school or schools as a whole, in a nonprofessional capacity, including such areas as secretarial, custodial, maintenance, transportation, school lunch and as aides;

(f) "Principals Academy" or "academy" means the academy created pursuant to section two-b, article three-a of this chapter;

(g) "Center for Professional Development" means the center created pursuant to section one, article three-a of this chapter;

(h) "Job-sharing arrangement" means a formal, written agreement voluntarily entered into by a county board with two or more of its employees who wish to divide between them the duties and responsibilities of one authorized full-time position;

(i) "Prospective employable professional personnel" means certified professional educators who:

(1) Have been recruited on a reserve list of a county board;

(2) Have been recruited at a job fair or as a result of contact made at a job fair;
(3) Have not obtained regular employee status through the job posting process provided for in section seven-a, article four of this chapter; and

(4) Have obtained a baccalaureate degree from an accredited institution of higher education within the past year;

(j) "Dangerous student" means a pupil who is substantially likely to cause serious bodily injury to himself, herself or another individual within that pupil’s educational environment, which may include any alternative education environment, as evidenced by a pattern or series of violent behavior exhibited by the pupil and documented in writing by the school, with the documentation provided to the student and parent or guardian at the time of any offense; and

(k) "Alternative education" means an authorized departure from the regular school program designed to provide educational and social development for students whose disruptive behavior places them at risk of not succeeding in the traditional school structures and in adult life without positive interventions.

(l) “Long-term substitute” means a substitute employee who fills a vacant position:

That the county superintendent expects to extend for at least ninety consecutive days and is either:

(A) Listed in the job posting as a long-term substitute position of over ninety days; or

(B) Listed in a job posting as a regular, full-time position and:

(i) Is not filled by a regular, full-time employee; and

(ii) Is filled by a substitute employee.

For the purposes of section two, article sixteen, chapter five of this code, long-term substitute does not include a retired employee hired to fill the vacant position.
AN ACT to amend and reenact §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §12-6-18, all relating to investment of moneys by the West Virginia Investment Management Board; modifying the type and amount of bonds or insurance coverage that may be obtained and maintained by the Investment Management Board; authorizing the establishment and maintenance of a self-insurance account in connection with the procurement and maintenance of insurance coverage by the Investment Management Board; clarifying powers of the board; modifying provisions relating to authority of the board to make certain investments in investment companies or investment trusts registered under the Investment Company Act of 1940; modifying restrictions and limitations on permissible investments by the West Virginia Investment Management Board; authorizing investment in real estate investment funds and alternative investment funds and establishing conditions and limitations on the same; providing an exemption from disclosure under the Freedom of Information Act with respect to
information concerning which disclosure is prohibited, restricted or limited by standard confidentiality agreements, policies or procedures of firms, companies or organizations through which the West Virginia Investment Management Board invests, to the extent of the prohibitions, restrictions or limitations; requiring certain additional information be part of the Investment Management Board’s annual report; providing authority for the Legislature to commission or direct audits, reviews and studies as it considers necessary; and specifying that the provisions of the article are to be liberally construed to effect the public purposes of the article.

Be it enacted by the Legislature of West Virginia:

That §12-6-2, §12-6-4, §12-6-5, §12-6-9c, §12-6-12 and §12-6-14 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 §12-6-18, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-2. Definitions.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

§12-6-5. Powers of the board.

§12-6-9c. Authorization of additional investments.

§12-6-12. Investment restrictions.

§12-6-14. Reports of board; legislative audits, reviews and studies.

§12-6-18. Liberal construction.

§12-6-2. Definitions.

1 As used in this article, unless a different meaning clearly appears from the context:
(1) "Beneficiaries" means those individuals entitled to benefits from the participant plans;

(2) "Board" means the governing body for the West Virginia Investment Management Board and any reference elsewhere in this code to board of investments or West Virginia Trust Fund means the board as defined in this subdivision;

(3) "401(a) plan" means a plan which is described in section 401(a) of the Internal Revenue Code of 1986, as amended, and with respect to which the board has been designated to hold assets of the plan in trust pursuant to the provisions of section nine-a of this article;

(4) "Local government funds" means the moneys of a political subdivision, including policemen’s pension and relief funds, firemen’s pension and relief funds and volunteer fire departments, transferred to the board for deposit;

(5) "Participant plan" means any plan or fund subject now or hereafter to subsection (a), section nine-a of this article;

(6) "Political subdivision" means and includes a county, municipality or any agency, authority, board, county board of education, commission or instrumentality of a county or municipality and regional councils created pursuant to the provisions of section five, article twenty-five, chapter eight of this code;

(7) "Trustee" means any member serving on the West Virginia Investment Management Board: Provided, That in section nine-a of this article in which the terms of the trusts are set forth, “trustee” means the West Virginia Investment Management Board;

(8) "Securities" means all bonds, notes, debentures or
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other evidences of indebtedness and other lawful investment instruments; and

(9) “State funds” means all moneys of the state which may be lawfully invested except the “school fund” established by section four, article XII of the state constitution.

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

(a) The management and control of the board shall be vested solely in the trustees in accordance with the provisions of this article.

(b) The Governor shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The vice chairman shall preside at all meetings in the absence of the chairman. Annually, the trustees shall elect a secretary, who need not be a member of the board, to keep a record of the proceedings of the board.

(c) The trustees shall appoint a chief executive officer of the board and shall fix his or her duties and compensation. The chief executive officer shall have five years’ experience in investment management with public or private funds within the ten years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations and other investment management or investment oversight or institutional investment experience in a combination the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees.
(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. 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 and the security of transactions.

(e) The board shall procure and maintain in effect commercially customary property, liability, crime and other insurance to cover risks of loss from its operations. The types and amounts of the insurance coverages shall be determined by the board, from time to time, in its reasonable discretion, with reference to the types and amounts of insurance coverages purchased or maintained by other public institutions performing functions similar to those performed by the board: Provided, That the board shall purchase a blanket bond for the faithful performance of its duties in the amount of at least ten million dollars. The board may require that appropriate types and amounts of insurance be procured and maintained by, or 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 shall be fixed by the board. The premiums payable on any insurance or fiduciary or surety bonds that the board may require, from time to time, shall be an expense of the board. In connection with the duties of the board under this subsection, the board may establish, fund and maintain a self-insurance account. If established, the board shall deposit and maintain moneys in the self-insurance account in amounts as may be determined by the board in consultation with one or more qualified insurance or actuarial consultants, and all moneys in any self-insurance account may be used only for the purpose of providing self-insurance, establishing reserves in connection with insurance deductibles, self-insured retentions or self-insurance, or helping to defray the costs of insurance procured under this
subsection, and for no other purpose. The board may procure any and all insurance coverages and bonds deemed appropriate by the board or required by the provisions of this article, either through the state Board of Risk and Insurance Management or in the commercial markets, in the discretion of the board.

(f) The trustees and employees of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board: Provided, That the trustees and employees of the board are liable for acts of misfeasance or gross negligence.

(g) The board is exempt from the provisions of sections seven and eleven, article three of this chapter and article three, chapter five-a of this code: Provided, That the trustees and employees of the board are subject to purchasing policies and procedures which shall be promulgated by the board. The purchasing policies and procedures may be promulgated as emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code.

(h) Any employee of the West Virginia Trust Fund who previously was an employee of another state agency may return to the Public Employees Retirement System pursuant to section eighteen, article ten, chapter five of this code and may elect to either: (1) Transfer to the Public Employees Retirement System his or her employee contributions, with accrued interest and, if vested, his or her employer contributions, with accrued interest and retain as credited state service all time served as an employee of the West Virginia Trust Fund; or (2) retain all employee contributions with accrued interest and, if vested, his or her employer contributions with interest and forfeit all service credit for the time served as an employee of the West Virginia Trust Fund.
§12-6-5. Powers of the board.

The board may exercise all powers necessary or appropriate, in accordance with the provisions of the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article, to carry out and effectuate its corporate purposes, including, but not limited to, the power to:

1. Adopt and use a common seal and alter it at pleasure;
2. Sue and be sued;
3. Enter into contracts and execute and deliver instruments;
4. Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages and other instruments;
5. Promulgate and enforce bylaws and rules for the management and conduct of its affairs;
6. Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors and consultants;
7. Acquire (by purchase, gift or otherwise), hold, exchange, pledge, lend and sell or otherwise dispose of securities and invest funds in interest earning deposits and in any other lawful investments;
8. Maintain accounts with banks, securities dealers and financial institutions both within and outside this state;
(9) Engage in financial transactions whereby securities are purchased by the board under an agreement providing for the resale of the securities to the original seller at a stated price;

(10) Engage in financial transactions whereby securities held by the board are sold under an agreement providing for the repurchase of the securities by the board at a stated price;

(11) Consolidate and manage moneys, securities and other assets of the other funds and accounts of the state and the moneys of political subdivisions which may be made available to it under the provisions of this article;

(12) Enter into agreements with political subdivisions of the state whereby moneys of the political subdivisions are invested on their behalf by the board;

(13) Charge and collect administrative fees from political subdivisions for its services;

(14) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(15) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the board;

(16) Make and, from time to time, amend and repeal bylaws, rules and procedures consistent with the provisions of this article;
(17) Hire its own employees, consultants, managers and advisors as it considers necessary and fix their compensation and prescribe their duties;

(18) Develop, implement and maintain its own banking accounts and investments;

(19) Do all things necessary to implement and operate the board and carry out the intent of this article;

(20) Upon request of the State Treasurer, transmit funds for deposit in the State Treasury to meet the daily obligations of state government;

(21) Establish one or more investment funds for the purpose of investing the funds for which it is trustee, custodian or otherwise authorized to invest pursuant to this article. Interests in each fund shall be designated as units and the board shall adopt industry standard accounting procedures to determine each fund’s unit value. The securities in each investment fund are the property of the board and each fund shall be considered an investment pool or fund and may not be considered a trust nor may the securities of the various investment funds be considered held in trust. However, units in an investment fund established by or sold by the board and the proceeds from the sale or redemption of any unit may be held by the board in its role as trustee of the participant plans; and

(22) Notwithstanding any other provision of the code to the contrary, conduct investment transactions, including purchases, sales, redemptions and income collections, which shall not be treated by the State Auditor as recordable transactions on the state’s accounting system.
§12-6-9c. Authorization of additional investments.

Notwithstanding the restrictions which may otherwise be provided by law with respect to the investment of funds, all administrators, custodians or trustees of pension funds other than the board, each political subdivision of this state and each county board of education may invest funds in the securities of or any other interest in any investment company or investment trust registered under the Investment Company Act of 1940, 15 U. S. C. §80a, the portfolio of which is limited: (i) To obligations issued by or guaranteed as to the payment of both principal and interest by the United States of America or its agencies or instrumentalities; and (ii) to repurchase agreements fully collateralized by obligations of the United States government or its agencies or instrumentalities: Provided, That the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian: Provided, however, That the investment company or investment trust is rated within one of the top two rating categories of any nationally recognized rating service such as Moody’s or Standard & Poor’s.

§12-6-12. Investment restrictions.

(a) The board shall hold in nonreal estate equity investments no more than seventy-five percent of the assets managed by the board and no more than seventy-five percent of the assets of any individual participant plan.

(b) In addition to any investments the board may make pursuant to subsection (h) of this section, the board shall hold in real estate equity investments no more than twenty-five percent of the assets managed by the board and no more than twenty-five percent of the assets of any individual participant.
plan: Provided, That any such investment be only made upon the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, upon the approval of the board or a committee designated by the board, and upon the execution of the transaction by a third-party investment manager: Provided, however, That the board’s ownership interest in any fund is less than forty percent of the fund’s assets at the time of purchase: Provided further, That the combined investment of institutional investors, other public sector entities and educational institutions and their endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the board’s total investment in the fund at the time of acquisition. For the purposes of this subsection, “fund” means a real estate investment trust traded on a major exchange of the United States of America, or a partnership, limited partnership, limited liability company or other entity holding or investing in related or unrelated real estate investments, at least three of which are unrelated and the largest of which is not greater than forty percent of the entity’s holdings, at the time of purchase.

(c) The board shall hold in international securities no more than thirty percent of the assets managed by the board and no more than thirty percent of the assets of any individual participant plan.

(d) The board may not at the time of purchase hold more than five percent of the assets managed by the board in the nonreal estate equity securities of any single company or association: Provided, That if a company or association has a market weighting of greater than five percent in the Standard & Poor’s 500 index of companies, the board may
hold securities of that nonreal estate equity equal to its market weighting.

(e) No security may be purchased by the board unless the type of security is on a list approved by the board. The board may modify the securities list at any time and shall give notice of that action pursuant to subsection (g), section three of this article and shall review the list at its annual meeting.

(f) Notwithstanding the investment limitations set forth in this section, it is recognized that the assets managed by the board or the assets of the participant plans, whether considered in the aggregate or individually, may temporarily exceed the investment limitations in this section due to market appreciation, depreciation and rebalancing limitations. Accordingly, the limitations on investments set forth in this section shall not be considered to have been violated if the board rebalances the assets it manages or the assets of the participant plans, whichever is applicable, to comply with the limitations set forth in this section at least once every twelve months based upon the latest available market information and any other reliable market data that the board considers advisable to take into consideration, except for those assets authorized by subsections (b) and (h) of this section for which compliance with the percentage limitations shall be measured at such time as the investment is made.

(g) The board, at the annual meeting required in subsection (h), section three of this article, shall review, establish and modify, if necessary, the investment objectives of the individual participant plans as incorporated in the investment policy statements of the respective trusts so as to provide for the financial security of the trust funds giving consideration to the following:
(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and

(8) Reasonable cost of fees.

(h) In addition to any and all other investments the board may make under this article and all investment authority granted to the board by this article, the board is expressly authorized to invest no more than twenty percent of the assets managed by the board and no more than twenty percent of the assets of any individual participant plan, or any other endowment or other fund managed by the board, as measured at the time of the investment, in any one or more classes, styles or strategies of alternative investments suitable and appropriate for investment by the board. A suitable and appropriate alternative investment is a private equity fund such as a venture capital, private real estate or buy-out fund; commodities fund; distressed debt fund; mezzanine debt fund; hedge fund; put or call on an individual security purchased for the purpose of hedging an authorized investment position; or fund consisting of any combination of private equity, distressed or mezzanine debt, hedge funds, private real estate, commodities and other types and categories of investment permitted under this article:
Provided, That any such investment be only made upon the recommendation by a professional, third-party fiduciary investment adviser registered with the Securities and Exchange Commission under the Investment Advisors Act of 1940, as amended, upon the approval of the board or a committee designated by the board and upon the execution of the transaction by a third-party investment manager:

Provided, however, That if the standard confidentiality agreements, policies or procedures of any firm, company or organization through which the board invests in securities prohibit, restrict or limit the disclosure of information pertaining to the securities, the information shall be exempt from disclosure, under the provisions of chapter twenty-nine-b of this code or otherwise, to the extent of the prohibitions, restrictions or limitations: Provided further, That the board’s ownership interest in any fund is less than forty percent of the fund’s assets at the time of purchase: And provided further, That the combined investment of institutional investors, other public sector entities, and educational institutions and their endowments and foundations in the fund is in an amount equal to or greater than fifty percent of the board’s total investment in the fund at the time of acquisition. For the purposes of this subsection, “fund” means a partnership, limited partnership, limited liability company or other form of entity holding or investing in a collection of related or unrelated investments, at least three of which are unrelated and the largest of which is not greater than forty percent of the fund’s composition at the time of purchase. To facilitate access to markets, control, manage or diversify portfolio risk, or enhance performance or efficiency in connection with investments in alternative investments and all other types and categories of investment permitted under this article, the board may enter into commercially customary and prudent market transactions consistent with the laws of the state: And provided further, That neither the purpose nor the effect of
such transactions may materially increase market risk or market exposure of the total portfolio of investments as adjusted, from time to time, by the board. The investments described in this subsection are subject to the requirements, limitations and restrictions set forth in this subsection and the standard of care set forth in section eleven of this article, but are not subject to any other limitations or restrictions set forth elsewhere in this article or code.

§12-6-14. Reports of board; legislative audits, reviews and studies.

(a) The board shall prepare annually, or more frequently if considered necessary by the board, a report of its operations and the performance of the various funds administered by it. The report shall include all operational costs, including, but not limited to, investment advisor fees, transaction costs, custody fees, and administrative salaries and costs.

(b) A copy shall be furnished to the chief financial officer of each participant.

(c) Within the first seven calendar days of each calendar year, the board shall file the annual report with the Joint Committee on Government and Finance, with copies to the President of the Senate, Speaker of the House and Legislative Auditor.

(d) Upon request, the report shall be made available to any legislative committee, any banking institution or state or federal savings and loan association in this state and any member of the news media. The report shall be kept available for inspection by any citizen of this state.
(e) The board shall cooperate with any legislative audits, performance and consultant reviews and studies of the board as may be directed by the Joint Committee on Government and Finance.

§12-6-18. Liberal construction.

This article, being necessary to secure the public health, safety, convenience and welfare of the citizens of this state, shall be liberally construed to effect the public purposes of this article. The powers granted to the board in this article, including, without limitation, those granted in section five of this article, are intended to be broad and shall be construed broadly so as to vest in the board the power and authority necessary or appropriate to carry out and effectuate its corporate purposes in the financial markets of the world, as the same may evolve, from time to time, at all times in a fashion consistent with the prudent investor standard as provided by the West Virginia Uniform Prudent Investor Act, codified as article six-c, chapter forty-four of this code and section eleven of this article.
thereto a new section, designated §15-5-19a, all relating to the possession of firearms during a proclaimed state of emergency; and clarifying the powers and authorities granted by said article with respect thereto.

Be it enacted by the Legislature of West Virginia:

That §15-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-5-19a, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.


§15-5-19a. Possession of firearms during a declared state of emergency.


1 The provisions of this section shall be operative only during the existence of a state of emergency. The existence of a state of emergency may be proclaimed by the Governor or by concurrent resolution of the Legislature if the Governor in such proclamation, or the Legislature in such resolution, finds that an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state, and that the safety and welfare of the inhabitants of this state require an invocation of the provisions of this section. Any such emergency, whether proclaimed by the Governor or by the Legislature, shall terminate upon the proclamation of the termination thereof by the Governor, or the passage by the Legislature of a concurrent resolution terminating such emergency.

16 So long as such state of emergency exists, the Governor shall have and may exercise the following additional emergency powers:
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19 (a) To enforce all laws, rules and regulations relating to the provision of emergency services and to assume direct operational control of any or all emergency service forces and helpers in the state;

(b) To sell, lend, lease, give, transfer or deliver materials or perform functions relating to emergency services on such terms and conditions as he or she shall prescribe and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for such property;

(c) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of chapter fifty-four of this code or seizure pending institution of condemnation proceedings within thirty days from the seizing thereof and to construct, lease, transport, store, maintain, renovate or distribute such materials and facilities. Compensation for property so procured shall be made in the manner provided in chapter fifty-four of this code;

(d) To obtain the services of necessary personnel, required during the emergency, and to compensate them for their services from his or her contingent funds or such other funds as may be available to him or her;

(e) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take such steps as are necessary for the receipt and care of such evacuees;

(f) To control ingress and egress to and from a disaster area, the movement of persons within the area and the occupancy of premises therein;
(g) To suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency;

(h) To utilize such available resources of the state and of its political subdivisions as are reasonably necessary to cope with the emergency;

(i) To suspend or limit the sale, dispensing or transportation of alcoholic beverages, firearms, explosives and combustibles;

(j) To make provision for the availability and use of temporary emergency housing; and

(k) To perform and exercise such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population.

No powers granted under this section may be interpreted to authorize the seizure or confiscation of a firearm from a person unless that firearm is unlawfully possessed or unlawfully carried by the person, or the person is otherwise engaged in a criminal act.

§15-5-19a. Possession of firearms during a declared state of emergency.

No powers granted under this article to state or local authorities may be interpreted to authorize the seizure or confiscation of a firearm from a person during a declared state of emergency unless that firearm is unlawfully possessed or unlawfully carried by the person, or the person is otherwise engaged in a criminal act.
AN ACT to amend and reenact §30-29-1 and §30-29-5 of the Code of West Virginia, 1931, as amended, all relating to motor carrier inspectors and weight enforcement officers of the Public Service Commission; including motor carrier inspector and weight enforcement officers employed by the Public Service Commission in the definition of law-enforcement officer; and requiring certification as a law-enforcement officer of persons hired as motor carrier inspectors and weight enforcement officers after the first day of July, two thousand seven.

Be it enacted by the Legislature of West Virginia:

That §30-29-1 and §30-29-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.
§30-29-5. Certification requirements.

§30-29-1. Definitions.
For the purposes of this article, unless a different meaning clearly appears in the context:

"Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

"Chief executive" means the Superintendent of the State Police; the chief conservation officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief conservation officer of natural resources; or the chief of any West Virginia municipal law-enforcement agency;

"County" means the fifty-five major political subdivisions of the state;

"Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

"Governor's committee on crime, delinquency and correction" or "Governor's committee" means the Governor's committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although
those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy regional recreation authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency: Provided, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special conservation officer;

"Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

"Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

"Subcommittee" or "law-enforcement training subcommittee" means the subcommittee of the Governor's committee on crime, delinquency and correction created by section two of this article; and

"West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy regional recreation authority, the Public Service Commission nor any state institution of higher education may be deemed a law-enforcement agency.

§30-29-5. Certification requirements.

(a) Except as provided in subsections (b) and (g) below, no person may be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by thePublic Service Commission.
Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e) below, by the Governor's committee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: Provided, That the provisions of this section shall not apply to persons hired by the Public Service Commission as motor carrier inspectors and weight enforcement officers prior to the first day of July, two thousand seven.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The person's employer shall provide notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty calendar days of that person's commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the Governor's committee requesting
certification as having met the minimum entry level law-
enforcement qualification and training program requirements. 
Upon determining that an applicant has met the requirements 
for certification, the Governor's committee shall forward to 
the applicant documentation of certification. An applicant 
who fails to complete the training program to which he or she 
is first admitted, or was admitted upon reapplication, may not 
be certified by the Governor's committee: Provided, however, 
That an applicant who has completed the minimum training 
required by the Governor's committee may be certified as a 
law-enforcement officer, notwithstanding the applicant's 
failure to complete additional training hours required in the 
training program to which he or she originally applied.

(c) Any person who is employed as a law-enforcement 
officer on the effective date of this article and is a graduate of 
the West Virginia basic police training course, the West 
Virginia State Police cadet training program, or other 
approved law-enforcement training academy, is certifiable as 
having met the minimum entry level law-enforcement 
training program requirements and is exempt from the 
requirement of attending a law-enforcement training 
academy. To receive certification, the person shall make 
written application within ninety calendar days of the 
effective date of this article to the Governor's committee 
requesting certification. The Governor's committee shall 
review the applicant's relevant scholastic records and, upon 
determining that the applicant has met the requirements for 
certification, shall forward to the applicant documentation of 
certification.

(d) Any person who is employed as a law-enforcement 
officer on the effective date of this article and is not a 
graduate of the West Virginia basic police training course, 
the West Virginia State Police cadet training program, or
other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the Governor's committee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The Governor's committee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(e) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the Governor's committee. To receive certification, the person shall make written application within ninety calendar days following the commencement of employment to the Governor's committee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The
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Governor's committee shall review the application and, if it finds the applicant has met the requirements for certification shall forward to the applicant documentation of certification.

(f) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state: Provided, That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person’s employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person’s application to the subcommittee as a private citizen is subsequently approved.

(g) Nothing in this article may be construed as prohibiting any governing body, civil service commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the Governor's committee.

(h) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding the effective date of this article for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such
provisions be mandatory during the five years next
succeeding the effective date of this article for law-
enforcement officers of a law-enforcement agency which
does not employ a civil service system for its
law-enforcement personnel: Provided, That such
requirements shall be mandatory for all such law-
enforcement officers until their law-enforcement officials
apply for their exemption by submitting a written plan to the
Governor's committee which will reasonably assure
compliance of all law-enforcement officers of their agencies
within the applicable two or five-year period of exemption.

(i) Any person aggrieved by a decision of the Governor's
committee made pursuant to this article may contest such
decision in accordance with the provisions of article five,
chapter twenty-nine-a of this code.

(j) Any person terminated from employment for not filing
an application to the law-enforcement training academy
within ninety days after commencing employment as a law-
enforcement officer may appeal the termination to the
Governor's committee for reconsideration on an individual
basis.

(k) Beginning the first day of July, two thousand two,
until the thirtieth day of June, two thousand three, any
applicant who has been conditionally employed as a law-
enforcement officer who failed to submit a timely application
pursuant to the provisions of this section, may be
conditionally employed as a law-enforcement officer and
may resubmit an application pursuant to subsection (b) of this
section to an approved law-enforcement training academy.
If the applicant is accepted, the employer shall pay
compensation to the employee for attendance at the law-
enforcement training academy at the rate provided in section
eight of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-58; and to amend and reenact §12-3-10a, §12-3-10d and §12-3-10e of said code, all relating to the state Purchasing Card Program; creating the Purchasing Improvement Fund; authorizing use of purchasing cards for regular routine payments, travel and emergency purchases and cash advances for travel purchases; authorizing expenditures from the Purchasing Card Administration Fund to pay expenses related to the use of the card and the general operation of the Auditor's office; providing expenditure from the fund for the Hatfield-McCoy Regional Recreation Authority; and adding members to the Purchasing Card Advisory Committee.

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-3-58; and that §12-3-10a, §12-3-10d and §12-3-10e of said code be amended and reenacted, all to read as follows:

Chapter

5A. Department of Administration.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-58. Creation of the Purchasing Improvement Fund.

1 There is hereby created in the State Treasury a special revenue account to be known as the Purchasing Improvement Fund. The Purchasing Improvement Fund shall receive funds transferred from the Purchasing Card Administration Fund by the Auditor pursuant to section ten-d, article three, chapter twelve of this code and shall be administered by the secretary. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon 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 eight, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-10a. Purchasing Card Program.

§12-3-10d. Purchasing Card Fund created; expenditures.

§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

§12-3-10a. Purchasing Card Program.

1 Notwithstanding the provisions of section ten of this article, payment of claims may be made through the use of
the state Purchasing Card Program authorized by the provisions of this section. The Auditor, in cooperation with the Secretary of the Department of Administration, may establish a state Purchasing Card Program for the purpose of authorizing all spending units of state government to use a purchasing card as an alternative payment method. The Purchasing Card Program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient. The program shall permit spending units to use a purchasing card to pay for goods and services. Notwithstanding any other provision of this code to the contrary, a purchasing card may be used to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments, and such payments shall be set at an amount to be determined by the Auditor. Purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument: Provided, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Purchases of goods and services must be received either in advance of or simultaneously with the use of a state purchasing card for payment for those goods or services. The Auditor, by legislative rule, may eliminate the requirement for vendor invoices and provide a procedure for consolidating multiple vendor payments into one monthly payment to a charge card vendor. Selection of a charge card vendor to provide state purchase cards shall be accomplished by competitive bid. The Purchasing Division of the Department of Administration shall contract with the successful bidder for provision of state purchasing cards. Purchasing cards issued under the program shall be used for official state purchases only. The Auditor shall propose rules for promulgation in accordance with the provisions of article
three, chapter twenty-nine-a of this code to govern the implementation of the purchase card program.

§12-3-10d. Purchasing Card Fund created; expenditures.

(a) All money received by the state pursuant to any agreement with vendors providing purchasing charge cards, and any interest or other return earned on the money, shall be deposited in a special revenue revolving fund, designated the Purchasing Card Administration Fund, in the State Treasury to be administered by the Auditor. The fund shall be used to pay all expenses incurred by the Auditor in the implementation and operation of the Purchasing Card Program and may be used to pay expenses related to the general operation of the Auditor's office. The Auditor also may use the fund to pay expenses incurred by spending units associated with the use of the card, including system and program enhancements, and inspection and monitoring of compliance with all applicable rules and procedures. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter five-a of this code.

(b) Within three days of receiving rebate moneys resulting from state spending unit purchasing card purchases, the Auditor shall transfer fifteen and one-half percent of such rebate moneys to the Purchasing Improvement Fund created pursuant to section fifty-eight, article three, chapter five-a of this code.

(c) Within three days of receiving rebate moneys resulting from state spending unit purchasing card purchases, the Auditor shall transfer fifteen and one-half percent of such
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§12-3-10e. Purchasing Card Advisory Committee created; purpose; membership; expenses.

There is created a Purchasing Card Advisory Committee to enhance the development and implementation of the purchasing card program. The committee shall solicit input from state agencies and make recommendations to improve the performance of the Purchasing Card Program. The committee consists of fourteen members to be appointed as follows:

1. The Auditor shall serve as chairperson of the committee and shall appoint four members from the State College System of West Virginia and the University System of West Virginia, one member from the Department of Health and Human Resources, one member from the Division of Highways and two additional members at large from any state agency;

2. The Secretary of the Department of Administration shall appoint one member from the Information Services and Communications Division, one member from the Financial Accounting and Reporting Section and one member from the Purchasing Division;

3. The Secretary of the Department of Revenue shall appoint one member from the Department of Revenue; and

4. The State Treasurer shall appoint one member from that office. Committee members shall be appointed for a term of one year, commencing on the first day of July, one thousand nine hundred ninety-eight. Committee members shall receive reimbursement for expenses actually incurred in the performance of their duties on the committee.
AN ACT to amend and reenact §17G-2-3 of the Code of West Virginia, 1931, as amended, relating to extending the sunset provision regarding racial profiling analysis.

Be it enacted by the Legislature of West Virginia:

That §17G-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. ANALYSIS OF TRAFFIC STOPS STUDY AND ANNUAL REPORT BY DIRECTOR OF THE GOVERNOR’S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.


(a) To facilitate the commencement of data collection, the Director of the Governor’s Committee on Crime, Delinquency and Corrections, in consultation with the Division of Motor Vehicles, shall propose legislative rules in accordance with article three, chapter twenty-nine-a of this code. These rules shall include, but are not limited to:

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RACIAL PROFILING

(1) The manner of reporting the information to the Division of Motor Vehicles;

(2) Promulgation of a form or forms for reporting purposes by various law-enforcement agencies;

(3) A means of reporting the information required in section two, article one of this chapter on warning citations to the Division of Motor Vehicles;

(4) In consultation with the Fraternal Order of Police, the Sheriff’s Association, the Deputy Sheriff’s Association and representatives of law-enforcement agencies, a means of providing training to law-enforcement officers on completion and submission of the data on the proposed form;

(5) A means of reporting back to individual law-enforcement agencies, from time to time, at the request of a law-enforcement agency on findings specific to that agency in an agreed-upon format to allow the agency to evaluate independently the data provided;

(6) A limitation that the data is to be used solely for the purposes of this chapter;

(7) Safeguards to protect the identity of individual law-enforcement officers collecting data required by section two, article one of this chapter when no citation or warning is issued;

(8) Methodology for collection of gross data by law-enforcement agencies and the analysis of the data;

(9) The number of motor vehicle stops and searches of motor vehicles occupied by members of a perceived minority
group; the number of motor vehicle stops and searches of
motor vehicles occupied by persons who are not members of
a minority group; the population of minorities in the areas
where the stops occurred; estimates of the number of all
vehicles traveling on the public highways where the stops
occurred; factors to be included in any evaluation that the
data may indicate racial profiling, racial stereotyping or other
race-based discrimination or selective enforcement; and other
data deemed appropriate by the Governor’s Committee on
Crime, Delinquency and Correction for the analysis of the
protection of constitutional rights; and

(10) Protocols for reporting collected data by the Division
of Motor Vehicles to the Governor’s Committee on Crime,
Delinquency and Correction and the analysis thereof.

(b) Annually, on or before the first day of February, the
Director of the Governor’s Committee on Crime,
Delinquency and Correction shall publish a public report of
the data collected and provide a copy thereof to all
law-enforcement agencies subject to this chapter and provide
a copy of the report and analysis of the data collected to the
Governor and to the Joint Committee on Government and
Finance.

(c) The provisions of sections two and three, article one
of this chapter and section two of this article were effective
the thirty-first day of December, two thousand four.

(d) Collection of data pursuant to subsection (a) of this
section shall terminate on the thirty-first day of December,
two thousand eight. The provisions of this chapter shall be
of no force or effect after the thirtieth day of June, two
thousand nine.
AN ACT to repeal §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended; to repeal §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code; to amend said code by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; to amend said code by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; to amend and reenact §5F-2-1 and §5F-2-2 of said code; and to amend and reenact §20-1-7 of said code, all relating to the creation of the Real Estate Division in the Department of Administration; providing the Real Estate Division approval of leases; exempting the acquisition and management of public lands and streams by the Division of Natural Resources; creating the position of Executive Director of the Real Estate Division; granting the division authority; requiring inspection of leased or rental property; requiring agencies to maintain and submit real estate inventory records to the Real Estate Division; requiring review of real property inventory; granting rule-making authority; transferring the Public Land Corporation to the Real Estate Division; continuing the Public Land Corporation’s board of directors; continuing the Public Land Corporation powers and duties related to the acquisition, leasing, development, disposition and use of public lands; requiring sales of public...
land to be conducted by competitive bidding and exceptions; requiring public hearing before the sale, lease, exchange or transfer of land or minerals; requiring competitive bidding and notice before the development or extraction of minerals and related standards; and providing for the transfer and transition of the Public Land Corporation to the Real Estate Division.

Be it enacted by the Legislature of West Virginia:

That §5A-3-38, §5A-3-39, §5A-3-40, §5A-3-40a and §5A-3-41 of the Code of West Virginia, 1931, as amended, be repealed; that §20-1A-1, §20-1A-2, §20-1A-3, §20-1A-4, §20-1A-5, §20-1A-6, §20-1A-8 and §20-1A-9 of said code be repealed; that said code be amended by adding thereto a new article, designated §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-4, §5A-10-5, §5A-10-6, §5A-10-7, §5A-10-8, §5A-10-9, §5A-10-10 and §5A-10-11; that said code be amended by adding thereto a new article, designated §5A-11-1, §5A-11-2, §5A-11-3, §5A-11-4, §5A-11-5, §5A-11-6, §5A-11-7 and §5A-11-8; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; and that §20-1-7 of said code be amended and reenacted, all to read as follows:

Chapter
  5A. Department of Administration.
  5F. Reorganization of the Executive Branch of State Government.
  20. Natural Resources.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article
  10. Real Estate Division.

ARTICLE 10. REAL ESTATE DIVISION.

§5A-10-1. Division created; purpose; director.
§5A-10-2. Leases for space to be made in accordance with article; exceptions.
§5A-10-3. Powers and duties of Real Estate Division.
§5A-10-4. Leasing of space by executive director; delegation of authority.
§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.
§5A-10-1. Division created; purpose; director.

(a) There is hereby created the Real Estate Division within the Department of Administration for the purpose of establishing a centralized office to provide leasing, appraisal and other real estate services to the Secretary of the Department of Administration.

(b) The division shall be under the supervision and control of an executive director, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

(c) Candidates for the position of executive director shall:

(1) Have at least a bachelor of arts or science degree from an accredited four-year college or university; and

(2) (A) Be a licensed real estate broker, pursuant to the provisions of article forty, chapter thirty of this code; or

(B) Be a licensed or certified real estate appraiser pursuant to the provisions of article thirty-eight, chapter thirty of this code; or

(3) (A) Be considered based on their demonstrated education, knowledge and a minimum of ten years’ experience in the areas of commercial real estate leasing, commercial real estate appraisal; or
(B) Any relevant experience of a minimum of ten years which demonstrates an ability to effectively accomplish the purposes of this article.

(d) The Real Estate Division is authorized to employ such employees, including, but not limited to, real estate appraisers licensed in accordance with the provisions of article thirty-eight, chapter thirty of this code, as may be necessary to discharge the duties of the division.

§5A-10-2. Leases for space to be made in accordance with article; exceptions.

(a) Notwithstanding any other provision of this code, no department, agency or institution of state government may lease, or offer to lease, as lessee, any grounds, buildings, office or other space except in accordance with the provisions of this article and article three of this chapter.

(b) The provisions of the article, except as to office space, do not apply to the Division of Highways of the Department of Transportation.

(c) The provisions of this article do not apply to:

(1) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

(2) The Higher Education Policy Commission;

(3) The West Virginia Council for Community and Technical College Education;
(4) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code;

(5) The real property held by the Department of Agriculture, including all institutional farms, easements, mineral rights, appurtenances, farm equipment, agricultural products, inventories, farm facilities and operating revenue funds for those operations; or

(6) The real property held by the West Virginia State Conservation Committee, including all easements, mineral rights, appurtenances and operating revenue funds for those operations.

§5A-10-3. Powers and duties of Real Estate Division.

The Real Estate Division has the following powers and duties:

(1) To provide leasing, appraisal and other real estate services to state spending units;

(2) To ensure that the purchase of real estate and all contracts for lease are based on established real estate standards and fair market price;

(3) To develop and implement minimum lease space standards for the lease of any grounds, buildings, office or other space required by any spending unit of state government;

(4) To develop and implement minimum standards for the selection and acquisition, by contract or lease, of all grounds, buildings, office space or other space by a spending unit of state government except as otherwise provided in this article;
(5) To establish and maintain a comprehensive database of all state real estate contracts and leases;

(6) To develop policies and procedures for statewide real property management;

(7) To maintain a statewide real property management system that has consolidated real property, building and lease information for all departments, agencies and institutions of state government;

(8) To develop and maintain a centralized repository of comprehensive space needs for all state departments, agencies and institutions of state government, including up-to-date space and resource utilization, anticipated needs and recommended options;

(9) To provide statewide policy leadership and coordinate master planning to guide and organize capital asset management; and

(10) To provide assistance to all state departments, agencies or institutions in acquiring, leasing and disposing of real property.

§5A-10-4. Leasing of space by executive director; delegation of authority.

The executive director is authorized to lease, in the name of the state, any grounds, buildings, office or other space required by any department, agency or institution of state government: Provided, That the executive director may expressly delegate, in writing, the authority granted to him or her by this article to the appropriate department, agency or institution of state government when the rental and other costs to the state do not exceed the sum specified by regulation in any one fiscal year or when necessary to meet bona fide emergencies arising from unforeseen causes.
§5A-10-5. Selection of grounds, etc.; acquisition by contract or lease; long-term leases.

(a) The executive director has sole authority to select and to acquire by contract or lease, in the name of the state, all grounds, buildings, office space or other space, the rental of which is necessarily required by any spending unit, upon a certificate from the chief executive officer or his designee of said spending unit that the grounds, buildings, office space or other space requested is necessarily required for the proper function of said spending unit, that the spending unit will be responsible for all rent and other necessary payments in connection with the contract or lease and that satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings now owned or leased by the state.

(b) The executive director shall, before executing any rental contract or lease, determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist and shall contract for or lease said premises at a price not to exceed the fair rental value thereof.

(c) The executive director may enter into long-term agreements for buildings, land and space for periods longer than one fiscal year: Provided, That such long-term lease agreements are not for periods in excess of forty years, except that the secretary may, in the case of the Adjutant General's department, enter into lease agreements for a term of fifty years or a specific term of more than fifty years so as to comply with federal regulatory requirements and shall contain, in substance, all the following provisions:

(1) That the Department of Administration, as lessee, has the right to cancel the lease without further obligation on the part of the lessee upon giving thirty days' written notice to the
lessor, such notice being given at least thirty days prior to the last day of the succeeding month;

(2) That the lease shall be considered canceled without further obligation on the part of the lessee if the state Legislature or the federal government should fail to appropriate sufficient funds therefor or should otherwise act to impair the lease or cause it to be canceled; and

(3) That the lease shall be considered renewed for each ensuing fiscal year during the term of the lease unless it is canceled by the Department of Administration before the end of the then current fiscal year.


(a) Notwithstanding any provision of law to the contrary, the executive director has 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 executive director 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.
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(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 retained by the Division of Natural Resources and deposited into the appropriate fund. Revenues derived from the lease of property under the control of the Department of Agriculture shall be deposited into the Agriculture Fees 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 the 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 executive director 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
§5A-10-7. Leases and other instruments for space signed by executive director; approval as to form; filing.

Leases and other instruments for grounds, buildings, office or other space shall be signed by the Executive Director of the Real Estate Division in the name of the state. They shall be approved as to form by the Attorney General. A lease or other instrument for grounds, buildings, office or other space that contains a term, including any options, of more than six months for its fulfillment shall be filed with the State Auditor.

§5A-10-8. Inspection of leased property; requiring approval of executive director for permanent changes.

(a) The Executive Director of the Real Estate Division shall inspect as necessary any property which may be under a lease or rental agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used and operated in accordance with the terms and conditions of the lease or rental agreement. The executive director is authorized to take such action necessary to correct any violation of the terms and conditions of the lease or rental agreement.

(b) A spending unit which is granted any grounds, buildings, office space or other space leased in accordance with the provisions of this article may not order or make permanent changes of any type thereto, unless the Executive Director of the Real Estate Division has first determined that the change is necessary for the proper, efficient and economically sound operation of the spending unit.

(c) For purposes of this section, a "permanent change" means any addition, alteration, improvement, remodeling,
repair or other change involving the expenditure of state funds for the installation of any tangible effect which cannot be economically removed from the grounds, buildings, office space or other space when vacated by the spending unit.


(a) All real property owned or leased by the state shall be accounted for by the state spending unit that owns, leases or is in the possession of the real property.

(b) Each state spending unit shall establish and maintain a record of each item of real property it owns and/or leases and annually furnish its records to the Real Estate Division.

(c) The accounting and reporting requirements of this section, except as to office space, do not apply to:

   (1) The Division of Highways of the Department of Transportation;

   (2) Public lands, rivers and streams acquired, managed or which title is vested in or transferred to the Division of Natural Resources of the Department of Commerce, pursuant to section seven, article one, chapter twenty of this code and section two, article five of said chapter;

   (3) The Higher Education Policy Commission;

   (4) The West Virginia Council for Community and Technical College Education; or

   (5) The institutional boards of governors in accordance with the provisions of subsection (v), section four, article five, chapter eighteen-b of this code.

(d) With regard to public lands that may be by law specifically allocated to and used by any state agency,
institution, division or department, such agency, institution,
division or department shall provide an inventory of such
public land(s) to the Public Land Corporation in accordance
with the provisions of article eleven of this chapter.

(e) The records furnished to the Real Estate Division shall
include the following information, if applicable:

(1) A description of each item of real property including:

(A) A reference to a book, page and/or image number
from the county records in a particular county; or

(B) A legal description;

(2) The date of purchase and the purchase price of the
real property;

(3) The date of lease and the rental costs of the real
property;

(4) The name of the state spending unit holding title to
the real property for the state;

(5) A description of the current uses of the real property
and the projected future use of the real property; and

(6) A description of each building or other improvement
located on the real property.

If the description of real property required under this
section is excessively voluminous, the Real Estate Division
may direct the spending unit in possession of the real
property to furnish the description only in summary form, as
agreed to by the division and the spending unit.
§5A-10-10. Real property review.

(a) At least once every four years, the Real Estate Division shall review the inventory of real property for each state spending unit submitted pursuant to this article to verify the accuracy of the inventory records.

(b) Based on the review of the inventory of real property, the Real Estate Division shall:

(1) Identify any real property owned or leased by the state that is not being used or that is being substantially underused;

(2) Make recommendations to the Governor and the Secretary of the Department of Administration regarding the use of real property, which shall include:

(A) An analysis of the highest and best use to which the real property may legally be placed; and

(B) An analysis of alternative uses of the real property addressing the potential for any other transaction or use that the Real Estate Division determines to be in the best interest of the state; and

(3) Submit to the Governor and the Secretary of the Department of Administration any information pertinent to the evaluation of a potential transaction involving the real property, including:

(A) An evaluation of any proposals received from private parties that would be of significant benefit to the state; and

(B) The market value of such real property.

1. The executive director shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement and enforce the provisions of this article.

ARTICLE 11. PUBLIC LAND CORPORATION.

§5A-11-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary to board; professional and support staff; execution of legal documents, permits and licenses.
§5A-11-4. Public Land Corporation to conduct sales of public lands by competitive bidding, modified competitive bidding or direct sale.
§5A-11-5. Public Land Corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.
§5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.


1. (a) The Public Land Corporation, heretofore created and established as a unit of the Division of Natural Resources, is hereby continued and established as a unit of the Real Estate Division of the Department of Administration.

2. (b) The corporation is a public benefit corporation and an instrumentality of the state and may sue or be sued, contract and be contracted with, plead and be impleaded, have and use a common seal.

3. (c) The corporation is vested with the title of the State of West Virginia in public lands, the title to which now is or may hereafter become vested in the State of West Virginia by reason of any law governing the title of lands of the state: Provided, That those lands for which title is specifically
vested by law in other state agencies, institutions and departments shall continue to be vested in such state agencies, institutions and departments.

(d) The provisions of this article do not apply to:

(1) The State of West Virginia’s interest in the rivers, streams, creeks or beds thereof and all other public lands managed or acquired by the Division of Natural Resources pursuant to the provisions of section seven, article one, chapter twenty of this code and section two, article five, chapter twenty of this code, the title to all of which shall collectively be transferred to and vested in the Division of Natural Resources for the use and enjoyment of the citizens of the state; or

(2) Public lands acquired by the Division of Forestry pursuant to article one-a, chapter nineteen of this code.

§5A-11-2. Corporation boards of directors, members, expenses, appointment, terms, qualifications; director as board chairman; meetings, quorum; executive secretary, secretary to board; professional and support staff; execution of legal documents, permits and licenses.

(a) The Public Land Corporation is governed by a board of directors comprised of six members of which four shall be ex officio and two shall be appointed by the Governor. The members of the board shall receive no compensation for their service thereon. The board members who are not ex officio shall be reimbursed by the Secretary of the Department of Administration for their actual and necessary expenses incurred pursuant to their duties under this article from funds authorized for such purposes.

(b) The following serve as ex officio members of the board:
(1) The Executive Director of the Real Estate Division or a designee, who shall serve as chair;

(2) The Director of the Division of Natural Resources or a designee;

(3) The Commissioner of the Department of Culture and History or a designee; and

(4) The Secretary of the Department of Administration, or a designee.

(c) The Governor shall appoint, by and with the advice and consent of the Senate, two members with a demonstrated interest and knowledge in the conservation and protection of the aesthetic, biological, geological, historical, archeological, cultural or recreational values of the public lands of the state. The terms are for four years and no member may serve more than two consecutive terms. The members on the board as of the first day of January, two thousand seven, shall continue to serve until their term has expired and may be reappointed.

(d) A majority of the board constitutes a quorum for the transaction of business. The board shall meet at such times and places as it may determine and shall meet on call of the chair. It shall be the duty of the chair to call a meeting of the board on the written request of any three members.

(e) The Executive Director of the Real Estate Division shall appoint and supervise an Executive Secretary of the Public Land Corporation, and may employ other necessary professional and support staff for the purposes of this article, who shall be employees of the Department of Administration with merit system status.

(f) An affirmative vote of a majority of the members of the corporation is required for any action of the corporation with respect to the sale or exchange of public lands or for the
 issuance of a lease or contract for the development of minerals, oil or gas. All actions must be taken at a scheduled meeting of the corporation held in compliance with the provisions of article nine-a, chapter six of this code.

(g) The powers and duties of the corporation are nondelegable, except that the executive secretary may negotiate and enter into preliminary agreements on behalf of the corporation, and shall, upon authorization of the corporation, be entitled to engage in valid actions of the corporation in respect of day-to-day administrative activities. An agreement entered into by the executive secretary on behalf of the corporation is not valid until such agreement is approved by an affirmative vote of a majority of the corporation.


(a) The corporation is hereby authorized and empowered to:

(1) Acquire from any persons or the State Auditor or any local, state or federal agency, by purchase, lease or other agreement, any lands necessary and required for public use;

(2) Acquire by purchase, condemnation, lease or agreement, receive by gifts and devises or exchange, rights-of-way, easements, waters and minerals suitable for public use;

(3) Sell or exchange public lands where it is determined that the sale or exchange of such tract meets any or all of the following disposal criteria:

(A) The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;
(B) Disposal of the tract serves important public objectives including, but not limited to, expansion of communities and economic development which cannot be achieved on lands other than public lands and which clearly outweigh other public objectives and values including, but not limited to, recreation and scenic values which would be served by maintaining the tract in state ownership; or

(C) The tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another state department or agency.

(4) Sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under state or federal government administration subject to the disposal criteria specified in subdivision (3) of this subsection;

(5) Negotiate and effect loans or grants from the government of the United States or any agency thereof for acquisition and development of lands as may be authorized by law to be acquired for public use;

(6) Expend the income from the use and development of public lands for the following purposes:

(A) Liquidate obligations incurred in the acquisition, development and administration of lands, until all obligations have been fully discharged;

(B) Purchase, develop, restore and preserve for public use, sites, structures, objects and documents of prehistoric, historical, archaeological, recreational, architectural and cultural significance to the State of West Virginia; and

(C) Obtain grants or matching moneys available from the government of the United States or any of its
instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes.

(7) Designate lands, to which it has title, for development and administration for the public use including recreation, wildlife stock grazing, agricultural rehabilitation and homesteading or other conservation activities;

(8) Enter into leases as a lessor for the development and extraction of minerals, including coal, oil, gas, sand or gravel, except as otherwise circumscribed herein: Provided, That leases for the development and extraction of minerals shall be made in accordance with the provisions of sections five and six of this article. The corporation shall reserve title and ownership to the mineral rights in all cases;

(9) Convey, assign or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of departments or other agencies as provided by law;

(10) Make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship or for any other public purpose.

(b) There is hereby continued in the State Treasury a special Public Land Corporation Fund into which shall be paid all proceeds from public land sales and exchanges and rents, royalties and other payments from mineral leases: Provided, That all royalties and payments derived from rivers, streams or public lands acquired or managed by the Division of Natural Resources pursuant to section seven, article one, chapter twenty of this code and section two, article five, chapter twenty of this code shall be retained by the Division of Natural Resources. The corporation may acquire public lands from use of the payments made to the
fund, along with any interest accruing to the fund. The
corporation shall report annually, just prior to the beginning
of the regular session of the Legislature, to the finance
committees of the Legislature on the financial condition of
the special fund. The corporation shall report annually to the
Legislature on its public land holdings and all its leases, its
financial condition and its operations and shall make such
recommendations to the Legislature concerning the
acquisition, leasing, development, disposition and use of
public lands.

c) All state agencies, institutions, divisions and
departments shall make an inventory of the public lands of
the state as may be by law specifically allocated to and used
by each and provide to the corporation a list of such public
lands and minerals, including their current use, intended use
or best use to which lands and minerals may be put:  
Provided, That the Division of Highways need not provide
the inventory of public lands allocated to and used by it, and
the Division of Natural Resources need not provide the
inventory of rivers, streams and public lands acquired or
managed by it. The inventory shall identify those parcels of
land which have no present or foreseeable useful purpose to
the State of West Virginia. The inventory shall be submitted
annually to the corporation by the first day of August. The
corporation shall compile the inventory of all public lands
and minerals and report annually to the Legislature by no
later than the first day of January, on its public lands and
minerals and the lands and minerals of the other agencies,
institutions, divisions or departments of this state which are
required to report their holdings to the corporation as set forth
in this subsection, and its financial condition and its
operations.
§5A-11-4. 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 or executive director 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 or director 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
25 high bid at the public sale. Lands otherwise offered under
26 this procedure would normally be public lands not located
27 near urban expansion areas, or not located near areas with
28 rapidly increasing land values, and where existing use of
29 adjacent lands would be jeopardized by sale under
30 competitive bidding procedures.

31 (3) Direct sale may be used when the lands offered for
32 sale are completely surrounded by lands in one ownership
33 with no public access, or where the lands are needed by local
34 governments.

35 (4) In no event shall lands be offered for sale by
36 "modified competitive sales" or "direct sale" unless and until
37 the corporation makes a written finding of justification for
38 use of an alternative bidding procedure.

39 (5) Subject to the bidding procedures set forth herein, the
40 corporation is authorized, at its discretion, to sell public lands
41 subject to rights-of-way, restrictive covenants or easements
42 retained by the corporation, limiting the use of such lands to
43 purposes consistent with the use of adjoining or nearby lands
44 owned by the corporation.

45 (c) When lands have been offered for sale by one method
46 of sale and the lands remain unsold, then the lands may be
47 reoffered by another method of sale.

48 (d) Except as provided in this article and section seven-a,
49 article one, chapter twenty of this code, public lands may not
50 be sold, exchanged or transferred by the corporation for less
51 than fair market value. Fair market value shall be determined
52 by an appraisal made by the Real Estate Division. The
53 appraisal shall be performed using the principles contained in
54 the current Uniform Appraisal Standards for Federal Land

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Acquisitions published under the auspices of the Interagency Land Acquisition Conference: Provided, That public lands not acquired or managed by the Division of Natural Resources pursuant to section seven, article one, chapter twenty of this code or section two, article five of said chapter 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 Executive Director of the Real Estate Division 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 propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, regarding procedures for conducting public land sales by competitive bidding, modified competitive bidding and direct sales.

§5A-11-5. Public Land Corporation to hold public hearing before sale, lease, exchange or transfer of land or minerals.

(a) Prior to any final decision of any state agency to sell, lease as a lessor, exchange or transfer land or minerals title to which is vested in the Public Land Corporation pursuant to this article, the Public Land Corporation shall:

(1) Prepare and reduce to writing the reasons and supporting data regarding the sale, lease, exchange or transfer of land or minerals. The written reasons required under this section shall be available for public inspection at the office of
the county clerk at the county courthouse of each county in which the affected lands or minerals are located during the two successive weeks before the date of the public hearing required by this section;

(2) Provide for a public hearing to be held at a reasonable time and place within each county in which the affected lands or minerals are located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the corporation's representative appointed pursuant to this section;

(3) Not less than thirty days prior to the public hearing, provide notice to all members of the Legislature, to the head of the governing body of any political subdivision having zoning or other land use regulatory responsibility in the geographic area within which the public lands or minerals are located and to the head of any political subdivision having administrative or public services responsibility in the geographic area within which the lands or minerals are located;

(4) Cause to be published a notice of the required public hearing. The notice 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 shall be each county in which the affected lands or minerals are located. The public hearing shall be held no earlier than the fourteenth successive day and no later than the twenty-first successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the affected lands or minerals;
(5) Cause a copy of the required notice to be posted in a conspicuous place at the affected land for members of the public to observe. The notice shall remain posted for two successive weeks prior to the date of the public hearing;

(6) Appoint a representative of the corporation who shall conduct the required public hearing. The corporation’s representative shall have full knowledge of all the facts and circumstances surrounding the proposed sale, lease, exchange or transfer. The representative of the corporation conducting the public hearing shall make the results of the hearing available to the executive director of the Real Estate Division and the Secretary of the Department of Administration for consideration prior to making final decisions regarding the affected lands or minerals. The representative of the corporation shall make a report of the public hearing available for inspection by the public or, upon written request of any interested person, provide a written copy thereof and to all individuals previously receiving written notice of the hearing within thirty days following the public hearing; and

(7) If the evidence at the public hearing establishes by a preponderance that the appraisal provided for in subsection (d), section four of this article does not reflect the true, fair market value, the Public Land Corporation shall cause another appraisal to be made.

(8) If the evidence at the public hearing establishes by a preponderance that the sale or exchange of land does not meet the criteria set forth in subdivision three, subsection (a), section three of this article, the public land corporation may not proceed with the sale or exchange of said land without judicial approval.
(b) The corporation may not sell, lease as lessor, exchange or transfer lands or minerals before the thirtieth successive day following the public hearing required by this section, but in no event may the sale, lease, exchange or transfer of lands or minerals be made prior to fifteen days after the report of the public hearings are made available to the public in general.

(c) If the corporation authorizes the staff to proceed with consideration of the lease or sale under the terms of this article, all requirements of this section shall be completed within one year of date of the authorization by the corporation.

§5A-11-6. Competitive bidding and notice requirements before the development or extraction of minerals on certain lands; related standards.

(a) The corporation may enter into a lease or contract for the development of minerals, including, but not limited to, coal, gas, oil, sand or gravel on or under lands in which the corporation holds any right, title or interest: Provided, That no lease or contract may be entered into for the extraction and removal of minerals by surface mining or auger mining of coal.

(b) With the exception of deep mining operations which are already in progress and permitted as of the fifth day of July, one thousand nine hundred eighty-nine, the extraction of coal by deep mining methods under state forests or wildlife refuges may be permitted only if the lease or contract provides that no entries, portals, air shafts or other incursions upon and into the land incident to the mining operations may be placed or constructed upon the lands or within three thousand feet of its boundary.
(c) Any lease or contract entered into by the corporation for the development of minerals shall reserve to the state all rights to subjacent surface support with which the state is seized or possessed at the time of such lease or contract.

(d) Notwithstanding any other provisions of the code to the contrary, nothing herein may be construed to permit extraction of minerals by any method from, on or under any state park or state recreation area, nor the extraction of minerals by strip or auger mining upon any state forest or wildlife refuge.

(e) The corporation may enter into a lease or contract for the development of minerals where the lease or contract is not prohibited by any other provisions of this code, only after receiving 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. The area for publication shall be each county in which the minerals are located.

(f) The minerals so advertised may be leased or contracted for development at not less than the fair market value, as determined by an appraisal made by an independent person or firm chosen by the corporation, to the highest responsible bidder, who shall give bond for the proper performance of the contract or lease as the corporation designates: Provided, That the corporation may reject any and all bids and to readvertise for bids.

(g) If the provisions of this section have been complied with, and no bid equal to or in excess of the fair market value is received, the corporation may, at any time during a period of six months after the opening of the bids, lease or contract...
for the development of the minerals, but the lease or contract price may not be less than the fair market value.

(h) Any lease or contract for the development of minerals entered into after the effective date of this section shall be made in accordance with the provisions of this section and section five of this article.

(i) The corporation will consult with the office of the Attorney General to assist the corporation in carrying out the provisions of this section.

(j) The corporation shall consult with an independent mineral consultant and any other competent third parties with experience and expertise in the leasing of minerals, to assist the corporation in carrying out the provisions of this section, including determining fair market value and negotiating terms and conditions of mineral leases.

(k) Once the lessee commences the production of minerals and royalties become due and are paid to the Public Land Corporation, the Public Land Corporation shall hire an independent auditing firm to periodically review the lessee's books and accounts for compliance of payment of appropriate royalties due the Public Land Corporation for its minerals as produced under the lease agreement.


To effectuate the transfer of the Public Land Corporation to Real Estate Division of the Department of Administration upon the effective date of this section in the year two thousand seven:
(1) Subject to the provisions of section one-d of this article, the Secretary of the Department of Administration or a designee and the Secretary of the Department of Commerce or a designee shall determine which employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the Public Land Corporation will be transferred to the Real Estate Division of the Department of Administration beginning the effective date of this section in the year two thousand seven: Provided, That any title transferred to or vested in the Public Land Corporation, formerly existing under the provisions of article one-a, chapter twenty of this code, as of the first day of July, two thousand seven, or which may hereafter become vested in the Public Land Corporation in accordance with the provisions of this article, shall continue to be vested in the Public Land Corporation.

(2) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by the Governor, by any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the Real Estate Division of the Department of Administration and were in effect on the date the transfer occurred continue in effect, for the benefit of the department, according to their terms until modified, terminated, superseded, set aside or revoked in accordance with the law by the Governor, the secretary of the Department of Administration, or other authorized official, a court of competent jurisdiction or by operation of law.

(3) Any proceedings, including, but not limited to, notices of proposed rulemaking, in which the Public Land Corporation was an initiating or responding party are not
affected by the transfer of the Public Land Corporation to the Real Estate Division of the Department of Administration. Orders issued in any proceedings continue in effect until modified, terminated, superseded or revoked by the Governor, the Secretary of Administration, by a court of competent jurisdiction or by operation of law. Nothing in this subdivision prohibits the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that a proceeding could have been discontinued or modified if the Public Land Corporation had not been transferred to the Real Estate Division of the Department of Administration. Transfer of the Public Land Corporation does not affect suits commenced prior to the effective date of the transfer and all such suits and proceedings shall be had, appeals taken and judgments rendered in the same manner and with like effect as if the transfer had not occurred, except that the Secretary of the Department of Administration or other officer may, in an appropriate case, be substituted or added as a party.


Pursuant to the provisions of article ten, chapter four of this code, the Public Land Corporation shall continue to exist until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.
§5F-2-2. Power and authority of secretary of each department.
§SF-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

1. Building Commission provided in article six, chapter five of this code;
2. Public Employees Insurance Agency and Public Employees Insurance Agency Advisory Board provided in article sixteen, chapter five of this code;
3. Governor's Mansion Advisory Committee provided for in article five, chapter five-a of this code;
4. Commission on Uniform State Laws provided in article one-a, chapter twenty-nine of this code;
5. West Virginia Public Employees Grievance Board provided for in article three, chapter six-c of this code;
6. Board of Risk and Insurance Management provided for in article twelve, chapter twenty-nine of this code;
7. Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
8. Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;

*Clerk's Note: This section was also amended by S.B. 442 (Chapter 207) which passed prior to this act, and S.B. 177 (Chapter 111) and S.B. 454 (Chapter 27) which passed subsequent to this act.

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(9) Division of Personnel provided in article six, chapter twenty-nine of this code;

(10) The West Virginia Ethics Commission provided in article two, chapter six-b of this code;

(11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code; and

(12) Real Estate Division provided in article ten, chapter five-a of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in article one, chapter twenty-one of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in article three-a, chapter twenty-one of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in article nine, chapter twenty-one of this code;

(2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-two-a of this code. The following boards are transferred to the Office of Miners' Health, Safety and Training for purposes of administrative support and liaison with the Office of the Governor:
(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in article six, chapter twenty-two-a of this code;

(B) Board of Miner Training, Education and Certification provided in article seven, chapter twenty-two-a of this code; and

(C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this code;

(3) The West Virginia Development Office, which includes the Division of Tourism and the Tourism Commission provided in article two, chapter five-b of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in article one, chapter twenty of this code;

(5) Division of Forestry provided in article one-a, chapter nineteen of this code;

(6) Geological and Economic Survey provided in article two, chapter twenty-nine of this code; and

(7) Workforce West Virginia provided in chapter twenty-one-a of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and
(D) Division of Research, Information and Analysis; and

(8) Division of Energy provided in article two-f, chapter five-b of this code.

(c) The Economic Development Authority provided in article fifteen, chapter thirty-one of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and Board provided in article one, chapter twenty-two-c of this code is continued as an independent agency within the executive branch.

(e) The following agencies and boards, including all of the allied, advisory and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;
(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Education and the Arts:

(1) Library Commission provided in article one, chapter ten of this code;

(2) Educational Broadcasting Authority provided in article five, chapter ten of this code;

(3) Division of Culture and History provided in article one, chapter twenty-nine of this code;

(4) Division of Rehabilitation Services provided in section two, article ten-a, chapter eighteen of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in article eleven, chapter five of this code;

(2) Division of Human Services provided in article two, chapter nine of this code;
(3) Bureau for Public Health provided in article one, chapter sixteen of this code;

(4) Office of Emergency Medical Services and Advisory Council provided in article four-c, chapter sixteen of this code;

(5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of this code;

(7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and

(8) The Child Support Enforcement Division provided in chapter forty-eight of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Military Affairs and Public Safety:

(1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;

(2) Armory Board provided in article six, chapter fifteen of this code;

(3) Military Awards Board provided in article one-g, chapter fifteen of this code;

(4) West Virginia State Police provided in article two, chapter fifteen of this code;
(5) Division of Homeland Security and Emergency Management and Disaster Recovery Board provided in article five, chapter fifteen of this code and Emergency Response Commission provided in article five-a of said chapter;

(6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;

(7) Division of Corrections provided in chapter twenty-five of this code;

(8) Fire Commission provided in article three, chapter twenty-nine of this code;

(9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

(10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this code; and

(11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter nine-a of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in article one, chapter eleven of this code;

(2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
(3) Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

(4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this code;

(5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;

(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of this chapter;

(10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;

(11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and

(12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this code.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:
REAL ESTATE DIVISION

(1) Division of Highways provided in article two-a, chapter seventeen of this code;

(2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a, chapter seventeen of this code;

(3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;

(4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this code;

(5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;

(6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and

(7) Port Authority provided in article sixteen-b, chapter seventeen of this code.

(k) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(l) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are
appellate bodies or are independent decisionmakers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(m) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(n) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§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 (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 appropriated 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
determined 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 be exercised in
accordance with the provisions of articles three, ten and
eleven, chapter five-a of this code: Provided, however, 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 (5) and (6), 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

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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 veterans' homes, the Division of Rehabilitation, public health departments, the Bureau for 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.

CHAPTER 20. NATURAL RESOURCES.

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 publication 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 not related to land and
stream management, 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.
AN ACT to amend and reenact §17-4-17b of the Code of West Virginia, 1931, as amended, relating to time schedules for utility relocation on highway projects; placing liability and costs on the utility company for failure to comply with proper removal notice; allowing the Division of Highways to reimburse utility companies for subsequent relocations due to plan change after a project is let to construction; and providing for meetings between Division of Highways and utilities.

Be it enacted by the Legislature of West Virginia:

That §17-4-17b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. STATE ROAD SYSTEM.

§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 reasonable notice in writing as mutually agreed, but not to exceed eighteen months
directing it to begin the physical removal, relocation or adjustment of such utility obstruction or interference at the cost of the utility, including construction inspection costs and in compliance with the rules of the division and the provisions of article three, chapter twenty-nine-a of this code.

(b) If the 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 a reasonable time 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.

(4) The utility’s submission shall include with the plans a work plan 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. The work 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 or other special requirements needed to complete the removal, relocation or adjustment. The division shall approve the work plan, including any requests for compensation, submitted by a utility for a highway.
improvement 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.

(c) 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 calendar days after receipt of the division’s written notification of the additional work. The utility’s revised work plan shall be reviewed by the division to ensure compliance with the highway project or improvement. The division shall reimburse the utility for work performed by the utility that must be performed again as the result of a plan change on the part of the division.

(d) Should the utility fail to comply with the notice to remove, relocate or adjust, the utility is liable to the division for direct contract damages, including costs, fees, penalties or other contract charges, for which the division is proven to be liable to a contractor caused by the utility’s failure to timely remove, relocate or adjust, unless a written extension is granted by the division. The utility shall not be liable for any delay or other failure to comply with a notice to remove, relocate or adjust that is not solely the fault of the utility, including, but not limited to, the following:

(1) The division has not performed its obligations in accordance with the division’s rules;

(2) The division has not obtained all necessary rights-of-way that affect the utility;

(3) The delay or other failure to comply by the utility is due to the division’s failure to manage schedules and communicate with the utility;

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(4) The division seeks to impose liability on the utility based solely upon oral communications or communications not directed to the utility’s designated contact person;

(5) The division changes construction plans in any manner following the notice to remove or relocate and the change affects the utility’s facilities; or,

(6) Other good cause, beyond the control of and not the fault of the utility, including, but not limited to, labor disputes, unavailability of materials on a national level, act of God, or extreme weather conditions.

(e) In order to avoid construction delays and to create an efficient and effective highway program, the division may schedule program meetings with the public utility on a quarterly basis to assure that schedules are maintained.

CHAPTER 216

(Com. Sub. for S.B. 524 - By Senators Kessler, Oliverio, Barnes, McKenzie, Plymale and Unger)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §22C-4-10 of the Code of West Virginia, 1931, as amended, relating to proof of lawful disposal of solid waste as a defense to a violation of disposal law; and establishing penalties for littering.

Be it enacted by the Legislature of West Virginia:

That §22C-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of one hundred fifty dollars may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than fifty dollars nor more than one thousand dollars or sentenced to perform not less than ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced to community service.

(b) The Solid Waste Management Board, in consultation and collaboration with the Public Service Commission, shall prepare and submit, no later than the first day of October, one thousand nine hundred ninety-two, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall
be submitted to the Governor, the President of the Senate and
the Speaker of the House of Delegates.

(c) The Public Service Commission, in consultation and
collaboration with the Division of Human Services, shall
prepare and submit, no later than the first day of October, one
thousand nine hundred ninety-two, a report concerning the
feasibility of reducing solid waste collection fees to
individuals who directly pay such fees and who receive
public assistance from state or federal government agencies
and are therefore limited in their ability to afford to pay for
solid waste disposal. This report shall consider the
individual's health and income maintenance and other
relevant matters. This report shall also include recommended
procedures for individuals or households to qualify for and
avail themselves of a reduction in fees. This report shall be
submitted to the Governor, the President of the Senate and
the Speaker of the House of Delegates.

CHAPTER 217

(S.B. 186 - By Senators Bowman, Bailey, Helmick, Boley,
Minard and Unger)

[Passed March 1, 2007; in effect from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-6-32 of the Code of West Virginia,
1931, as amended, relating to continuation of the Board of
Embalmers and Funeral Directors.

Be it enacted by the Legislature of West Virginia:

That §30-6-32 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 6. BOARD OF EMBALMERS AND FUNERAL DIRECTORS.

§30-6-32. Continuation of the Board of Embalmers and Funeral Directors.

Pursuant to the provisions of article ten, chapter four of this code, the Board of Embalmers and Funeral Directors shall continue to exist until the first day of July, two thousand fifteen, unless sooner terminated, continued or reestablished.

CHAPTER 218

(H.B. 2587 - By Delegates Ennis, Talbott and Blair)

[Passed March 7, 2007; in effect from passage.]
[Approved by the Governor on March 19, 2007.]

AN ACT to amend and reenact §30-8-11 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Optometry.

Be it enacted by the Legislature of West Virginia:

That §30-8-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-11. Continuation of the Board of Optometry.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Optometry shall continue to exist until the first day of July, two thousand eighteen, unless sooner terminated, continued or reestablished.
AN ACT to amend and reenact §30-9-32 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Accountancy.

Be it enacted by the Legislature of West Virginia:

That §30-9-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-32. Continuation of the West Virginia Board of Accountancy.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Accountancy shall 2 continue to exist until the first day of July, two thousand 3 seventeen, unless sooner terminated, continued or 4 reestablished.
AN ACT to amend and reenact §30-10-20 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Veterinary Medicine.

Be it enacted by the Legislature of West Virginia:

That §30-10-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. VETERINARIANS.

§30-10-20. Continuation of the Board of Veterinary Medicine.

1 Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Veterinary Medicine shall continue to exist until the first day of July, two thousand eighteen, unless sooner terminated, continued or reestablished.

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-17-16, relating to continuation of the Board of Registration for Sanitarians.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-17-16, to read as follows:

ARTICLE 17. SANITARIANS.

§30-17-16. Continuation of the Board of Registration for Sanitarians.

Pursuant to the provisions of article ten, chapter four of this code, the Board of Registration for Sanitarians shall continue to exist until the first day of July, two thousand sixteen, unless sooner terminated, continued or reestablished.

CHAPTER 222

(S.B. 190 - By Senators Bowman, Bailey, Helmick, Boley, Minard, Unger, Plymale and Foster)

[Passed March 1, 2007; in effect from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §30-21-16 of the Code of West Virginia, 1931, as amended, relating to continuation of the Board of Examiners of Psychologists.

Be it enacted by the Legislature of West Virginia:

That §30-21-16 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-16. Continuation of the Board of Examiners of Psychologists.

Pursuant to the provisions of article ten, chapter four of this code, the Board of Examiners of Psychologists shall continue to exist until the first day of July, two thousand eighteen, unless sooner terminated, continued or reestablished.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-30-14, relating to continuation of the Board of Social Work Examiners.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-30-14, to read as follows:

ARTICLE 30. SOCIAL WORKERS.


1 Pursuant to the provisions of article ten, chapter four of this code, the Board of Social Work Examiners shall continue to exist until the first day of July, two thousand seventeen, unless sooner terminated, continued or reestablished.
That §30-34-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-17. Continuation of the Board of Respiratory Care Practitioners.

Pursuant to the provisions of article ten, chapter four of this code, the Board of Respiratory Care Practitioners shall continue to exist until the first day of July, two thousand seventeen, unless sooner terminated, continued or reestablished.

CHAPTER 225

(Com. Sub. for H.B. 2801 - By Delegates Moye, Mahan, Kessler and Sumner)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on March 27, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §5H-1-1, §5H-1-2 and §5H-1-3, all relating to providing a death benefit to the families of firefighters and EMS personnel who are killed as a result of an injury arising out of and in the course of performance of official duties or arising out of any activity on or off duty in the capacity of a firefighter or EMS provider; establishing an effective date; and establishing the processes to get the death benefits and the funding source.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §5H-1-1, §5H-1-2 and §5H-1-3, all to read as follows:
ARTICLE 1. WEST VIRGINIA FIRE AND EMS SURVIVOR BENEFIT ACT.

§5H-1-1. Title and legislative intent.

1 (a) This article is known as the “West Virginia Fire and EMS Survivor Benefit Act.”

2 (b) It is the intent of the Legislature to provide for the payment of death benefits to the surviving spouse, designated beneficiary, children or parents of firefighters and EMS personnel killed in the performance of their duties.

§5H-1-2. Death benefit for survivors.

1 (a) In the event a firefighter or EMS provider is killed in the performance of his or her duties, the department chief, within thirty days from the date of death shall submit certification of the death to the Governor’s office.

2 (b) This act includes both paid and volunteer fire and EMS personnel acting in the performance of his or her duties of any fire or EMS department certified by the State of West Virginia.

3 (c) A firefighter or EMS provider is considered to be acting in the performance of his or her duties for the purposes of this act when he or she is participating in any role of a fire or EMS department function. This includes training, administration meetings, fire or EMS incidents, service calls, apparatus, equipment or station maintenance, fundraisers and travel to or from such functions.
(d) Travel includes riding upon any apparatus which is owned or used by the fire or EMS department, or any other vehicle going to or directly returning from a firefighter’s home, place of business or other place where he or she shall have been prior to participating in a fire or EMS department function or upon the authorization of the chief of the department or other person in charge.

(e) Certification shall include the name of the certified fire or EMS program, the name of the deceased firefighter or EMS provider, the name and address of the beneficiary and the circumstances that qualify the deceased individual for death benefits under this act. Upon receipt of the certification from the certified fire or EMS program, the state shall, from moneys from the State Treasury, General Fund, pay to the certified fire or EMS program the sum of fifty thousand dollars in the name of the beneficiary of the death benefit. Within five days of receipt of this sum from the state, the fire or EMS program certified by the state shall pay the sum as a benefit to the surviving spouse, or designated beneficiary. If there is no surviving spouse or designated beneficiary, to the minor children of the firefighter or EMS provider killed in the performance of duty. When no spouse, designated beneficiary, or minor children survive, the benefit shall be paid to the parent or parents of the firefighter or EMS provider. It is the responsibility of the certified fire or EMS program to document the surviving spouse or beneficiary for purposes of reporting to the Governor’s office.

(f) Any death ruled by a physician to be a result of an injury sustained during any of the above mentioned performance of fire department duties will be eligible for this benefit, even if this death occurs at a later time.

(g) Those individuals who are both firefighters and EMS personnel are eligible for only one death benefit payment.
AN ACT to amend and reenact §29-22-18 of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-10c of said code; to amend said code by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and to amend and reenact §29-25-1 of said code, all relating to authorization of West Virginia lottery table games generally; providing for Lottery Commission operation and administration expenses; providing recoupment criteria and changing the recoupment period for the capital reinvestment fund; West Virginia Lottery Racetrack Table Games Act; authorizing West Virginia Lottery table games at licensed horse and dog racetracks; providing for legislative findings, including constitutional considerations; providing definitions; providing for Lottery
Commission regulation of gaming activities; duties and powers of Lottery Commission; authorizing the Lottery Commission to promulgate rules; authorizing the Lottery Commission and director to hire necessary staff; placing requirements and limitations on lottery employees; providing for duties, powers and administrative expenses of the Lottery Commission; requiring local option elections to approve licensure of West Virginia Lottery table games at racetrack facilities; procedure for elections; providing for reconsideration elections; providing for licensees to engage in activities related to operation of West Virginia Lottery table games at racetrack facilities; providing qualifications for applicant for license to operate West Virginia Lottery table games at a racetrack facility; providing floor plan requirements; authorizing management service contracts; coordination of licensed activities; providing license application requirements; establishing an annual license surcharge for failure to construct certain hotel facilities; extension of time for construction; racetrack table games licensee qualifications; establishing license fees; requirement for surety bond; issuance of licenses and prohibiting transfer, assignment, sale or pledge as collateral; requiring audits and reports of licensees; providing duties of racetrack table games licensees; preference in hiring for table games jobs; providing that the state owns exclusive right to conduct table games and may grant a license to operate West Virginia Lottery table games to qualified licensees; providing duties for racetrack table games licensees; licensees to hold state harmless from any and all claims; providing reporting requirements for table games licensees; establishing requirements for licensees to supply gaming equipment or services; establishing requirements of license for employees of operator of racetracks with West Virginia Lottery table games; establishing requirements for management services provider license; establishing license fees; prohibitions to granting of a license; providing grounds for denial, revocation, suspension or reprimand of license; establishing hearing procedures; providing for expiration and renewal of licenses; requiring renewal fees; requiring Lottery Commission to give notice regarding license expiration and
renewal to licensees; specifying information to be included on license; requiring display and availability of license; requiring notice of change of address; requiring commission approval of West Virginia Lottery table games rules of play; resolution of disputes over game rules by Lottery Commission; requiring licensees to provide written notice to players of games of chance of game rules and payouts; providing for method to determine betting limits and operations and services by racetrack licensees; requiring the posting of betting limits and other requirements relating to operations and services; establishing limitations for offering complimentary goods and services; providing conditions for sale of alcohol; providing for contract agreements and costs for services and training of the State Police; exclusive jurisdiction of State Police over felony offenses committed at a racetrack; authorizing inspections and seizure of certain property; authorizing certain warrantless searches of person and property; imposing privilege tax on adjusted gross receipts of racetrack with West Virginia Lottery table games; providing procedure for filing and payment of said tax; exempting racetrack licensees from certain taxes; prohibition on credits against privilege tax; creating West Virginia Lottery Racetrack Table Games Fund; providing for distribution of amounts from said fund; creating Community Based Service Fund; appropriation of moneys for senior services by the Legislature; creating State Debt Reduction Fund; authorizing expenditures from said fund; authorizing and limiting use of funds by counties and municipalities; clarifying and limiting expenses of the Lottery Commission for administration and enforcement of article; providing prohibited wagers and other activities; prohibiting certain wagering methods; establishing criminal offenses and penalties; providing for forfeiture of certain property; providing civil penalties; providing for the preemption of certain local laws, ordinance and rules; providing for exemption from certain federal laws relating to shipment of gambling devices; and revising legislative findings relating to authorization of West Virginia Lottery table games at a well established resort hotel.
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-10c of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §29-22C-1, §29-22C-2, §29-22C-3, §29-22C-4, §29-22C-5, §29-22C-6, §29-22C-7, §29-22C-8, §29-22C-9, §29-22C-10, §29-22C-11, §29-22C-12, §29-22C-13, §29-22C-14, §29-22C-15, §29-22C-16, §29-22C-17, §29-22C-18, §29-22C-19, §29-22C-20, §29-22C-21, §29-22C-22, §29-22C-23, §29-22C-24, §29-22C-25, §29-22C-26, §29-22C-27, §29-22C-28, §29-22C-29, §29-22C-30, §29-22C-31, §29-22C-32, §29-22C-33 and §29-22C-34; and that §29-25-1 of said code be amended and reenacted, all to read as follows:

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.

(a) There is 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 the month following the first passage of a referendum election held pursuant to section seven, article twenty-two-c of this chapter and for eighteen months thereafter, 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.
(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.
TABLE GAMES

76 and the Education, Arts, Sciences and Tourism Debt Service
77 Fund when net profits for the preceding twelve months are not
78 at least equal to one hundred fifty percent of debt service on
79 bonds issued by the School Building Authority and the State
80 Building Commission which are secured by net profits.

(g) There is continued a special revenue fund in the State
82 Treasury which shall be designated and known as the “Lottery
83 Education Fund.” The fund shall consist of the amounts
84 allocated pursuant to subsection (f) of this section, which shall
85 be deposited into the Lottery Education Fund by the State
86 Treasurer. The Lottery Education Fund shall also consist of all
87 interest earned from investment of the Lottery Education Fund
88 and any other appropriations, gifts, grants, contributions or
89 moneys received by the Lottery Education Fund from any
90 source. The revenues received or earned by the Lottery
91 Education Fund shall be disbursed in the manner provided
92 below and may not be treated by the Auditor and Treasurer as
93 part of the general revenue of the state. Annually, the
94 Legislature shall appropriate the revenues received or earned by
95 the Lottery Education Fund to the state system of public and
96 higher education for these educational programs it considers
97 beneficial to the citizens of this state.

(h) On or before the twenty-eighth day of each month, as
99 long as revenue bonds or refunding bonds are outstanding, the
100 lottery director shall allocate to the School Building Debt
101 Service Fund created pursuant to the provisions of section six,
102 article nine-d, chapter eighteen of this code, as a first priority
103 from the net profits of the lottery for the preceding month, an
104 amount equal to one tenth of the projected annual principal,
105 interest and coverage ratio requirements on any and all revenue
106 bonds and refunding bonds issued, or to be issued, on or after
107 the first day of April, one thousand nine hundred ninety-four, as
108 certified to the lottery director in accordance with the provisions
109 of section six, article nine-d, chapter eighteen of this code. In
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110 no event shall the monthly amount allocated exceed one million
111 eight hundred thousand dollars, nor may the total allocation of
112 the net profits to be paid into the School Building Debt Service
113 Fund, as provided in this section, in any fiscal year exceed the
114 lesser of the principal and interest requirements certified to the
115 lottery director or eighteen million dollars. In the event there
116 are insufficient funds available in any month to transfer the
117 amount required to be transferred pursuant to this subsection to
118 the School Debt Service Fund, the deficiency shall be added to
119 the amount transferred in the next succeeding month in which
120 revenues are available to transfer the deficiency. A lien on the
121 proceeds of the State Lottery Fund up to a maximum amount
122 equal to the projected annual principal, interest and coverage
123 ratio requirements, not to exceed twenty-seven million dollars
124 annually, may be granted by the School Building Authority in
125 favor of the bonds it issues which are secured by the net lottery
126 profits.

127 When the school improvement bonds, secured by profits
128 from the lottery and deposited in the School Debt Service Fund,
129 mature, the profits shall become available for debt service on
130 additional school improvement bonds as a first priority from the
131 net profits of the lottery or may at the discretion of the authority
132 be placed into the School Construction Fund created pursuant to
133 the provisions of section six, article nine-d, chapter eighteen of
134 this code.

135 (i) Beginning on or before the twenty-eighth day of July,
136 one thousand nine hundred ninety-six, and continuing on or
137 before the twenty-eighth day of each succeeding month
138 thereafter, as long as revenue bonds or refunding bonds are
139 outstanding, the lottery director shall allocate to the Education,
140 Arts, Sciences and Tourism Debt Service Fund created pursuant
141 to the provisions of section eleven-a, article six, chapter five of
142 this code, as a second priority from the net profits of the lottery
143 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-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 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 any senior citizens medical care and other programs 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 advertising and marketing expenses for the promotion and development of tourism or any tourist facility or attraction in this state.

ARTICLE 22A. RACETRACK VIDEO LOTTERY ACT.

§29-22A-10c. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after the first day of July, two thousand one, there shall be imposed a surcharge of ten percent against the excess of total net terminal income
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4 generated from a licensed racetrack for that fiscal year over total
5 net terminal income from that licensed racetrack for the fiscal
6 year ending the thirtieth day of June, two thousand one.

7 (b) A Capital Reinvestment Fund is hereby created within
8 the lottery fund. Forty-two percent of the surcharge amount
9 attributable to each racetrack shall be retained by the
10 commission and deposited into a separate Capital Reinvestment
11 Account for that licensed racetrack. For each dollar expended
12 by a licensed racetrack for capital improvements at the
13 racetrack, at the location of any amenity associated with the
14 licensed racetrack’s destination resort facility operations, or at
15 adjacent facilities owned by the licensee, having a useful life of
16 seven or more years and placed in service after the first day of
17 April, two thousand one, the licensed racetrack shall receive one
18 dollar in recoupment from its Capital Reinvestment Fund
19 Account: Provided, That in the case of thoroughbred horse
20 tracks, four cents of every dollar in recoupment shall be
21 reserved into a separate account, which shall only be spent on
22 capital improvements and upgrading to facilities used for the
23 housing and care of horses, facilities located inside the
24 perimeter of the racing surface, including the surface thereof,
25 facilities used for housing persons responsible for the care of
26 horses, and that any such capital improvements and upgrading
27 shall be subject to recoupment under this section only if they
28 have been approved by the Horsemen’s Benevolent and
29 Protective Association acting on behalf of the horsemen:
30 Provided, however, That in the case of greyhound race tracks,
31 four cents of every dollar in recoupment shall be spent on
32 capital improvements and upgrading in the kennel area or other
33 areas at the track. If a licensed racetrack’s unrecouped capital
34 improvements exceed its capital reinvestment fund account at
35 the end of any fiscal year, the excess improvements may be
36 carried forward to seven subsequent fiscal years.

37 (c) Fifty-eight percent of the surcharge amount plus any
moneys remaining in a racetrack’s Capital Reinvestment Fund Account at the end of any fiscal year shall be deposited in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

ARTICLE 22C. WEST VIRGINIA LOTTERY RACETRACK TABLE GAMES ACT.

§29-22C-1. Short title.
§29-22C-2. State authorization of table games at licensed racetrack facilities; legislative findings and declarations.
§29-22C-3. Definitions.
§29-22C-4. Commission duties and powers.
§29-22C-5. Appointment of commission staff; conditions of employment.
§29-22C-6. Licenses required.
§29-22C-7. Local option election.
§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.
§29-22C-10. Duties of racetrack table games licensee.
§29-22C-11. Reports by a racetrack table games licensee.
§29-22C-12. License to supply a racetrack with gaming equipment or services.
§29-22C-13. License to be employed in a racetrack with West Virginia Lottery table games.
§29-22C-14. License to be a provider of management services.
§29-22C-15. License prohibitions.
§29-22C-16. License denial, revocation, suspension and reprimand.
§29-22C-17. Hearing procedures.
§29-22C-18. Notice of license expiration and renewal.
§29-22C-19. Miscellaneous license provisions.
§29-22C-20. Game rules of play; disputes.
§29-22C-21. Betting limits; operations and services.
§29-22C-23. Complimentary service, gift, cash or other item.
§29-22C-24. Law enforcement.
§29-22C-25. Inspection and seizure.
§29-22C-26. Tax on the privilege of holding a license to operate West Virginia Lottery table games.
§29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community Based Service Fund; State Debt Reduction Fund; distribution of funds.
§29-22C-29. Offenses and penalties.
§29-22C-30. Forfeiture of property.
§29-22C-31. Civil penalties.
§29-22C-32. Preemption.
§29-22C-33. Exemption from federal law.
§29-22C-34. Shipment of gambling devices.
§29-22C-1. Short title.

1 This article shall be known and may be cited as the West Virginia Lottery Racetrack Table Games Act.

§29-22C-2. State authorization of table games at licensed racetrack facilities; legislative findings and declarations.

1 (a) Operation of West Virginia lottery table games. -- Notwithstanding any provision of law to the contrary, the operation of West Virginia lottery racetrack table games and ancillary activities at a licensed racetrack and the playing of those West Virginia lottery table games at a licensed racetrack are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

2 (b) Legislative findings: -

3 (1) The Legislature finds that horse racing and dog racing and breeding play a critical role in the economy of this state, enhance the revenue collected at the racetracks, contribute vital revenues to the counties and municipalities in which the activities are conducted, provide for significant employment and protect and preserve greenspace and; that a substantial state interest exists in protecting these industries. Furthermore, it finds that the breeding and racing of thoroughbred horses is an integral part of West Virginia’s agriculture, and that agriculture is a critical ingredient in West Virginia’s economy. It further finds that the operation of table games pursuant to this article, at racetracks in this state that hold racetrack video lottery licenses and licenses to conduct horse or dog racing, will protect and preserve the horse racing and dog racing industries and horse and dog breeding industries, will protect and enhance the tourism industry in this state and indirectly benefit other segments of the economy of this state.
(2) The Legislature finds that, pursuant to section thirty-six, article VI of the Constitution of the State of West Virginia grants exclusively to the state the right to lawfully own and operate a lottery in this state.

(3) The Legislature finds that recognized principals of ownership allow an owner to maintain ownership while operating an enterprise through agents and licensees.

(4) The Legislature finds that it is in the best interest of the State of West Virginia for the state to operate a lottery in the form of table games.

(5) The Legislature finds that the table games authorized under the provisions of this article are lotteries as each game involves consideration, the possibility of a prize and their outcome is determined predominantly by chance, which the common law of West Virginia has long held are the three essential elements of a lottery.

(6) The Legislature finds that the lottery authorized by the provisions of this article is the exclusive intangible intellectual property of the State of West Virginia as are the other versions of lottery authorized under this chapter.

(7) The Legislature finds that the most effective manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to do so through licensees and further that effective operation and regulation requires limiting the number of locations at which the lottery and lottery games so authorized are allowed.

(8) The Legislature finds that limiting such table games as authorized under this article to facilities authorized by the provisions of article twenty-three, chapter nineteen of this code which are licensed pursuant to the provisions of article twenty-
two-a of this chapter to operate video lottery terminals is the most efficient and effective manner in which to regulate licensees.

(9) The Legislature finds that the granting of licenses pursuant to the provisions of this article while maintaining all ownership rights and exercising control through strict regulation of all West Virginia lottery table games authorized by the provisions of this article constitutes an appropriate exercise by the Legislature of the power granted it by the Constitution pursuant to the provisions of section thirty-six, article VI of the Constitution of West Virginia.

(10) The Legislature finds that the operation of West Virginia lottery table games at racetracks licensed pursuant to the provision of article twenty-two-a of this chapter and by the provisions of article twenty-three, chapter nineteen of this code serves to protect, preserve and promote the horse and dog racing and breeding industries of this state and will serve to protect, promote and enhance the tourism industry of the state as well as the general fiscal well-being of the state and its subdivisions.

§29-22C-3. Definitions.

(a) Applicability of definitions. -- For the purposes of this article, the words or terms defined in this section, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context in which the word or term is used.

(b) Terms defined. --

(1) “Adjusted gross receipts” means gross receipts from West Virginia Lottery table games less winnings paid to patrons wagering on the racetrack’s table games.
(2) “Applicant” means any person who on his or her own behalf, or on behalf of another, has applied for permission to engage in any act or activity that is regulated under the provision of this article for which a license is required by this article or rule of the commission.

(3) “Application” means any written request for permission to engage in any act or activity that is regulated under the provisions of this article submitted in the form prescribed by the commission.

(4) “Background investigation” means a security, criminal and credit investigation of an applicant who has applied for the issuance or renewal of a license pursuant to this article, or a licensee who holds a current license.

(5) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission created by article twenty-two of this chapter.

(6) “Complimentary” means a service or item provided at no cost or at a reduced price.

(7) “Compensation” means any money, thing of value, or financial benefit conferred or received by a person in return for services rendered, or to be rendered, whether by that person or another.

(8) “Contested case” means a proceeding before the commission, or a hearing examiner designated by the commission to hear the contested case, in which the legal rights, duties, interests or privileges of specific persons are required by law or Constitutional right to be determined after a commission hearing, but does not include cases in which the commission issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy
concerns whether the examination was fair or whether the applicant passed the examination and does not include rule making.

(9) “Control” means the authority directly or indirectly to direct the management and policies of an applicant for a license issued under this article or the holder of a license issued under this article.

(10) “Designated gaming area” means one or more specific floor areas of a licensed racetrack within which the commission has authorized operation of racetrack video lottery terminals or table games, or the operation of both racetrack video lottery terminals and West Virginia Lottery table games.

(11) “Director” means the Director of the West Virginia State Lottery Commission appointed pursuant to section six, article twenty-two of this chapter.

(12) “Disciplinary action” is an action by the commission suspending or revoking a license, fining, excluding, reprimanding or otherwise penalizing a person for violating this article or rules promulgated by the commission.

(13) “Financial interest” or “financially interested” means any interest in investments, awarding of contracts, grants, loans, purchases, leases, sales or similar matters under consideration for consummation by the commission. A member, employee or agent of the commission will be considered to have a financial interest in a matter under consideration if any of the following circumstances exist:

(A) He or she owns one percent or more of any class of outstanding securities that are issued by a party to the matter under consideration by the commission; or
(B) He or she is employed by an independent contractor for a party to the matter under consideration or consummated by the commission.

(14) “Gaming equipment” means gaming tables, cards, dice, chips, shufflers, drop boxes or any other mechanical, electronic or other device, mechanism or equipment or related supplies used or consumed in the operation of any West Virginia Lottery table game at a licensed racetrack.

(15) “Gross receipts” means the total of all sums including valid or invalid checks, currency, tokens, coupons (excluding match play coupons), vouchers or instruments of monetary value whether collected or uncollected, received by a racetrack with table games from table gaming operations at a race track, including all entry fees assessed for tournaments or other contests.

(16) “Indirect ownership” means an interest a person owns in an entity or in property solely as a result of application of constructive ownership rules without regard to any direct ownership interest (or other beneficial interest) in the entity or property. “Indirect ownership” shall be determined under the same rules applicable to determining whether a gain or loss between related parties is recognized for federal income tax purposes.

(17) “Licensed racetrack” means a thoroughbred horse or greyhound dog racing facility licensed under both article twenty-two-a of this chapter and article twenty-three, chapter nineteen of this code.

(18) “License” means any license applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery table games at a licensed racetrack;
(B) A license to supply a racetrack licensed under this article to operate table games with table gaming equipment or services necessary for the operation of table games;

(C) A license to be employed at a racetrack licensed under this article to operate West Virginia Lottery table games when the employee works in a designated gaming area that has table games or performs duties in furtherance of or associated with the operation of table games at the licensed racetrack; or

(D) A license to provide management services under a contract to a racetrack licensed under this article to operate table games.

(19) “Licensee” means any person who is licensed under any provision of this article.

(20) “Lottery” means the public gaming systems or games regulated, controlled, owned and operated by the State Lottery Commission in the manner provided by general law, as provided in this article and in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter.

(21) “Member” means a commission member appointed to the West Virginia Lottery Commission under article twenty-two of this chapter.

(22) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(23) “Own” means any beneficial or proprietary interest in any real or personal property, including intellectual property, and also includes, but is not limited to, any direct or indirect
beneficial or proprietary interest in any business of an applicant
or licensee.

(24) “Person” means any natural person, and any
corporation, association, partnership, limited liability company,
limited liability partnership, trust or other entity, regardless of
its form, structure or nature other than a government agency or
instrumentality.

(25) “Player” or “Patron” means a person who plays a
racetrack video lottery game or a West Virginia Lottery table
game at a racetrack licensed under this article to have table
games.

(26) “Player’s account” means a financial record established
by a licensed racetrack for an individual racetrack patron to
which the racetrack may credit winnings and other amounts due
to the racetrack patron and from which the patron may withdraw
moneys due to the patron for purchase of tokens, chips or
electronic media or other purposes.

(27) “Racetrack table games license” means authorization
granted under this article by the commission to a racetrack that
is already licensed under article twenty-two-a of this chapter to
operate racetrack video lottery terminals and holds a valid
racing license granted by the West Virginia Racing Commission
pursuant to the provision of article twenty-three, chapter
nineteen of this code, which permits the racetrack as an agent of
the commission for the limited purpose of operation of West
Virginia Lottery table games in one or more designated gaming
areas in one or more buildings owned by the licensed racetrack
on the grounds where live pari-mutuel racing is conducted by
the licensee.

(28) “Racetrack Table Games Fund” means the special fund
in the State Treasury created in section twenty-seven of this
article.
(29) “Significant influence” means the capacity of a person to affect substantially (but not control) either, or both, of the financial and operating policies of another person.

(30) “Supplier” means a person who the commission has identified under legislative rules of the commission as requiring a license to provide a racetrack table games licensee with goods or services to be used in connection with operation of table games.

(31) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(32) “West Virginia Lottery table game” means any game played with cards, dice or any mechanical, electromechanical or electronic device or machine for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, poker, craps, roulette, wheel of fortune or any variation of these games similar in design or operation and expressly authorized by rule of the commission, including multiplayer electronic table games, machines and devices, but excluding video lottery, punchboards, faro, numbers tickets, push cards, jar tickets, pull tabs or similar games.

(33) “Winnings” means the total cash value of all property or sums including currency, tokens, or instruments of monetary value paid to players as a direct result of wagers placed on West Virginia Lottery table games.

§29-22C-4. Commission duties and powers.

(a) Duties. -- In addition to the duties set forth elsewhere in this article or in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, the commission shall:

(1) Establish minimum standards for gaming equipment, including, but not limited to, electronic and mechanical gaming equipment;
(2) Enter into licensing agreements with facilities eligible to operate West Virginia Lottery table games for the state, providing criteria and guidelines for preservation of the state’s ownership, operation and control interests as provided by general law herein;

(3) Approve, modify or reject game rules of play proposed by the licensee for West Virginia Lottery table games proposed to be operated at a licensed racetrack;

(4) Approve, modify or reject minimum internal control standards proposed by the licensee governing racetrack table game operations, including the maintenance of financial records;

(5) Approve staff considered necessary by the director to oversee, inspect and monitor the operation of table games at any racetrack licensed under this article and article twenty-two-a of this chapter, including, but not limited to, inspection of designated gaming areas, gaming equipment and security equipment used in the operation of table games to assure continuous compliance with the provisions of this article, required license conditions and terms, and applicable rules of the commission;

(6) Determine eligibility of a person to hold or continue to hold a license issued under this article;

(7) Issue all licenses;

(8) Maintain a record of all licenses issued;

(9) Levy and collect the taxes imposed by this article and the fees, surcharges and civil penalties authorized, required or
(10) Keep a public record of all commission actions and proceedings with respect to West Virginia Lottery table games.

(b) Powers. -- In addition to the powers set forth elsewhere in this article or in articles twenty-two, twenty-two-a, twenty-two-b and twenty-five of this chapter, the commission may:

(1) Sue to enforce any provision of this article or any rule of the commission, whether by civil action or petition for injunctive relief;

(2) Hold hearings, administer oaths and issue subpoenas for attendance of witnesses to testify or subpoenas duces tecum for the production of documents or other evidence;

(3) Enter a licensed racetrack with West Virginia Lottery table games at any time and without notice to ensure strict compliance with this article and with the rules of the commission;

(4) Bar, for cause, any person from:

(A) Entering a designated gaming area of a licensed racetrack with table games, or the grounds of a racetrack licensed under this article; or
(B) Participating in any capacity in the play of any West Virginia Lottery table game, or in the operation of West Virginia Lottery table games;

(5) Promulgate, or propose for promulgation, in accordance with the provision of article three, chapter twenty-nine-a of this code, any legislative, interpretive and procedural rules the commission considers necessary for the successful implementation, administration and enforcement of this article, and to amend or revoke any promulgated rule, in accordance with provisions of article three, chapter twenty-nine-a of this code, at the discretion of the commission. Any rule proposed by the commission before the first day of September, two thousand seven may be promulgated as an emergency rule;

(6) Upon the effective date of this article and prior to promulgation of emergency rules, the commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses for: racetracks under section eight of this article; suppliers under section eleven of this article; racetrack employees under section twelve of this article; and providers of management services under section thirteen of this article; and

(7) Exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

§29-22C-5. Appointment of commission staff; conditions of employment.

(a) The director, with the approval of the commission, may appoint any professional, clerical, technical and administrative personnel, who shall be state employees hired in accordance with article six, chapter twenty-nine of this code, which the
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(a) No person may engage in any activity in connection with a racetrack with West Virginia Lottery table games in this state for which a license is required by this article or rules of the commission unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) Licenses are required for the following purposes:
(1) For any person operating a racetrack West Virginia Lottery table game in the state;

(2) For any person supplying a racetrack table games licensee with gaming equipment or gaming equipment services;

(3) For any individual employed by a racetrack table games licensee in connection with the operation of West Virginia Lottery table games in the state; and

(4) For any person providing management services under a contract to a racetrack table games licensee.

(c) The commission may not grant a license to an applicant until the commission determines that each person who has control of the applicant also meets all of the qualifications the applicant must meet to hold the license for which application is made. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant; and
(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant’s business operation.

(d) Any license required by this article or rules of the commission is in addition to all other licenses or permits required by applicable federal, state or local law.

§29-22C-7. Local option election.

(a) No racetrack may be licensed under this article to operate West Virginia Lottery table games until a local option election is held in the county in which pari-mutuel wagers are received at a racetrack licensed under article twenty-three, chapter nineteen of this code and the voters of that county voting on the question approve having West Virginia Lottery table games at the racetrack.

(b) The county commission shall place the question on the ballot upon the receipt of a written notice from a licensed racetrack located within that county requesting that the question be placed on the ballot.

(c) The county commission of the county in which table games would be located shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date at least thirty days preceding the day of the election. A local option election shall be effective even though the date of the order of the county commission setting the election or the
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(d) On the local option election ballot shall be printed the following:

Shall West Virginia Lottery table games be permitted at the [name of licensed racetrack]?

[ ] Yes [ ] No

(Place a cross mark in the square next to your choice.)

(e) The local option election shall be held in conjunction with the next primary or general election scheduled more than ninety days following receipt by the county commission of the notice required by this section or at a special election: Provided, That upon written request by the licensed racetrack that a special election be called, the county commission shall order a special election to be held on the question within ninety days after the receipt by the county commission of that request. The county commission may require the licensed racetrack to pay the entire cost incurred by the county to hold the special election. Approval shall be by a majority of the voters casting votes at the election on the question of approval or disapproval of West Virginia Lottery table games at a licensed racetrack.

(f) If the majority votes against allowing table games at a licensed racetrack, no election on the issue shall be held for a period of one hundred four weeks. A local option election may thereafter be held in the manner provided in this section. The process to hold another election on the question shall start anew, as if no prior request for an election on the question had been
(g) If the majority votes for allowing West Virginia Lottery table games at a licensed racetrack facility in a county, another local option election on the issue shall not be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which the horse or dog racetrack is located. The petition may be in any number of counterparts. The petition shall be in the following form:

Petition For Local Option Election

We, the undersigned legally qualified voters, resident within the County of ____________, do hereby petition that a special election be held within the County of ____________ upon the following question: Shall West Virginia Lottery table games be permitted at the [name of racetrack]?

Name          Address          Date  
(Post office or street address)

§29-22C-8. License to operate a racetrack with West Virginia Lottery table games.

(a) *Racetrack table games licenses.* -- The commission may issue up to four racetrack table games licenses to operate West Virginia Lottery table games in accordance with the provisions of this article. The Legislature intends that no more than four
licenses to operate a racetrack with West Virginia Lottery table games in this state shall be permitted in any event.

(b) Grant of license. — Upon the passage of a local option election in a county in accordance with the provisions of section seven of this article, the commission shall immediately grant a West Virginia Lottery table games license, and a license for the right to conduct West Virginia Lottery table games as assignee to the intellectual property rights of the state, to allow the licensee to conduct West Virginia table games at the licensed pari-mutuel racetrack identified on the local option election ballot, provided that racetrack holds a valid racetrack video lottery license issued by the commission pursuant to article twenty-two-a of this chapter and a valid racing license granted by the West Virginia Racing Commission pursuant to the provision of article twenty-three, chapter nineteen of this code and has otherwise met the requirements for licensure under the provisions of this article and the rules of the commission.

(c) Location. -- A racetrack table games license authorizes the operation of West Virginia Lottery table games on the grounds of the particular licensed facility identified in the racetrack video lottery license issued pursuant to article twenty-two-a and the license to conduct horse or dog racing issued pursuant to article twenty-three, chapter nineteen of this code.

(d) Floor plan submission requirement. -- Prior to commencing the operation of any table games in a designated gaming area, a racetrack table games licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which table games gaming equipment will be located and its proposed arrangement of the table games gaming equipment. Any floor plan submission that satisfies the requirements of the rules
promulgated by the commission shall be considered approved by the commission unless the racetrack table games licensee is notified in writing to the contrary within one month of filing a detailed floor plan.

(e) Management service contracts. --

(1) Approval. -- A racetrack table games licensee may not enter into any management service contract that would permit any person other than the licensee to act as the commission’s agent in operating West Virginia Lottery table games unless the management service contract is: (A) With a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the commission.

(2) Material change. -- The licensed racetrack table games licensee shall submit any material change in a management service contract previously approved by the commission to the commission for its approval or rejection before the material change may take effect.

(3) Prohibition on assignment or transfer. -- A management services contract may not be assigned or transferred to a third party.

(4) Other commission approvals and licenses. -- The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted or transferred to a third party to perform without the prior approval of the commission. Third parties must be licensed under this article before providing service. The commission may by rule clarify application of this subdivision and provide exceptions to its application. The commission shall license and require the display of West Virginia Lottery game
logos on appropriate game surfaces and other gaming items and locations as the commission considers appropriate.

(f) **Coordination of licensed activities.** -- In order to coordinate various licensed activities within racetrack facilities, the following provisions apply to licensed racetrack facilities:

1. The provisions of this article and of article twenty-two-a of this chapter shall be interpreted to allow West Virginia Lottery table games and racetrack video lottery operations under those articles to be harmoniously conducted in the same designated gaming area.

2. On the effective date of this article, the provisions of section twenty-three of this article apply to all video lottery games conducted within a racetrack facility, notwithstanding any inconsistent provisions contained in article twenty-two-a of this chapter to the contrary.

3. On and after the effective date of this article, vacation of the premises after service of beverages ceases is not required, notwithstanding any inconsistent provisions of this code or inconsistent rules promulgated by the Alcohol Beverage Control Commissioner with respect to hours of sale of those beverages, or required vacation of the premises.

(g) **Fees, expiration date and renewal.** --

1. An initial racetrack table games license fee of one million five hundred thousand dollars shall be paid to the commission at the time of issuance of the racetrack table games license, regardless of the number of months remaining in the license year for which it is issued. All licenses expire at the end of the day on the thirtieth day of June each year.

2. The commission shall annually renew a racetrack table games license as of the first day of July of each year provided the licensee:
(A) Successfully renews its racetrack video lottery license under article twenty-two-a of this chapter before the first day of July;

(B) Pays to the commission the annual license renewal fee of two million five hundred thousand dollars required by this section at the time it files its application for renewal of its license under article twenty-two-a of this chapter; and

(C) During the current license year, the licensee complied with all provisions of this article, all rules adopted by the commission and all final orders of the commission applicable to the licensee.

(3) Annual license surcharge for failure to construct hotel on premises. -- It is the intent of the Legislature that each racetrack for which a racetrack table games license has been issued be or become a destination tourism resort facility. To that end, it is important that each racetrack for which a racetrack table games license has been issued operate a hotel with significant amenities. Therefore, in addition to all other taxes and fees required by the provisions of this article, there is hereby imposed, upon each racetrack for which a racetrack table games license has been issued an annual license surcharge, payable to the commission in the amount of two million five hundred thousand dollars if that racetrack does not operate a hotel on its racing property that contains at least one hundred fifty guest rooms with significant amenities within three years of the passage of the local option election in its county authorizing table games at the racetrack, provided the time for completion of the hotel shall be extended by the same number of days as the completion of the hotel is delayed by a force majeure events or conditions beyond the reasonable control of the racetrack licensee. The surcharge shall be paid upon each
renewal of its racetrack table games license made after the expiration of the three year period, and may be extended by the above force majeure events or conditions, until the racetrack opens a qualifying hotel.

(4) If the licensee fails to apply to renew its license under article twenty-three, chapter nineteen and article twenty-two-a, chapter twenty-nine of this code until after the license expires, the commission shall renew its license under this article at the time it renews its license under article twenty-two-a of this chapter provided the licensee has paid the annual license fee required by this section and during the preceding license year the licensee complied with all provisions of this article, all rules adopted by the commission and all final orders of the commission applicable to the licensee.

(h) Facility qualifications. -- A racetrack table games licensee shall demonstrate that the racetrack with West Virginia Lottery table games will: (1) Be accessible to disabled individuals in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state and local laws; and (3) meet any other qualifications specified in rules adopted by the commission.

(i) Surety bond. -- A racetrack table games licensee shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

(1) In the amount determined by the commission to be adequate to protect the state against nonpayment by the licensee of amounts due the state under this article;
(2) In a form approved by the commission; and

(3) With a surety approved by the commission who is licensed to write surety insurance in this state. The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than thirty days’ notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(j) Authorization. -- A racetrack table games license authorizes the licensee act as an agent of the commission in operating an unlimited amount of West Virginia Lottery table games while the license is active, subject to subsection (d) of this section. A racetrack table games license is not transferable or assignable and cannot be sold or pledged as collateral.

(k) Audits. -- When applying for a license and annually thereafter prior to license renewal, a racetrack table games licensee shall submit to the commission an annual audit, by a certified public accountant, of the financial transactions and condition of the licensee’s total operations. The audit shall be made in accordance with generally accepted accounting principles and applicable federal and state laws.

(l) Commission office space. -- A racetrack table games licensee shall provide to the commission, at no cost to the commission, suitable office space at the racetrack facility for the commission to perform the duties required of it by this article and the rules of the commission.


All table games authorized by this article shall be West Virginia lottery games owned by the State of West Virginia. A racetrack table games license granted to a pari-mutuel racetrack by the commission pursuant to this article shall include the transfer by the commission to the racetrack limited license rights
in and to the commission’s intellectual property ownership of
the West Virginia lottery games which includes granting
licensees limited lawful authority relating to the conduct of
lottery table games for consideration, within the terms and
conditions established pursuant to this article and any rules
promulgated under this article.

§29-22C-10. Duties of racetrack table games licensee.

(a) General. -- All racetrack table games licensees shall:

1. Promptly report to the commission any facts or
circumstances related to the operation of a racetrack with West
Virginia Lottery table games which constitute a violation of
state or federal law;

2. Conduct all table games activities and functions in a
manner which does not pose a threat to the public health, safety
or welfare of the citizens of this state and which does not
adversely affect the security or integrity of the operation of
West Virginia Lottery table games;

3. Hold the commission and this state harmless from and
defend and pay for the defense of any and all claims which may
be asserted against a racetrack licensee, the commission, the
state or employees thereof, arising from the licensee’s actions or
omission while acting as an agent of the commission by
operation of West Virginia Lottery table games pursuant to this
article;

4. Assist the commission in maximizing table games
revenues;
(5) Give preference in hiring to existing employees who have expressed an interest in transferring to an entry level West Virginia Lottery Table games job and who have demonstrated the potential to succeed in that job. To enable these employees to develop the skills necessary to fill an entry level West Virginia Lottery table games position, a licensee shall provide customary industry training for entry level West Virginia Lottery table games jobs. The dates, times, place and manner of providing such training, the appropriate qualifications and certifications, the number of existing employees to be trained, the determination of standards for evaluating successful performance in live auditions for such positions and the determination of who shall be given West Virginia Lottery table game jobs shall be within the sole business discretion of the licensee’s management, provided that among equally qualified applicants, as determined by the licensee, length of service shall be the determining factor;

(6) Maintain all records required by the commission;

(7) Upon request by the commission, provide the commission access to all records and the physical premises where the licensee’s table games activities and related activities occur, for the purpose of monitoring or inspecting the licensee’s activities and the table games, gaming equipment and security equipment;

(8) Keep current in all payments and obligations to the commission; and

(9) Conduct no less than two hundred twenty live racing dates for each horse or dog race meeting or such other number of live racing dates as may be approved by the racing commission in accordance with the provisions of section
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(50) twelve-b, article twenty-three, chapter nineteen of this code, and otherwise keep in good standing, all licenses and permits granted by the racing commission pursuant to section six, article twenty-three, chapter nineteen of this code, and any rules promulgated thereunder.

(b) Specific. -- All racetrack table games licensees shall:

1. Acquire West Virginia Lottery table games and gaming equipment by purchase, lease or other assignment and provide a secure location for the placement, operation and play of the table games and gaming equipment;

2. Permit no person to tamper with or interfere with the operation of any West Virginia Lottery table game;

3. Ensure that West Virginia Lottery table games are within the sight and control of designated employees of the licensed racetrack with West Virginia Lottery table games and under continuous observation by security equipment in conformity with specifications and requirements of the commission;

4. Ensure that West Virginia Lottery table games are placed and remain placed in the specific locations within designated gaming areas at the licensed racetrack which have been approved by the commission. West Virginia Lottery table games at a licensed racetrack shall only be relocated in accordance with the rules of the commission;

5. Maintain at all times sufficient cash and gaming tokens, chips and electronic cards or other electronic media;
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(6) Install, post and display conspicuously at locations within or about the licensed racetrack with West Virginia Lottery table games, signs, redemption information and other promotional material as required by the commission; and

(7) Assume liability for stolen money from any table game.

§29-22C-11. Reports by a racetrack table games licensee.

A racetrack table games licensee shall maintain daily records showing the gross receipts and adjusted gross receipts of the racetrack from West Virginia Lottery table games and shall timely file with the commission any additional reports required by rule promulgated by the commission or required by other provisions of this code.

§29-22C-12. License to supply a racetrack with gaming equipment or services.

(a) License. -- The commission may issue a license to a person to supply a racetrack licensed under this article with gaming equipment or services when the commission determines that the person meets the requirements of this section and any applicable rules of the commission.

(b) License qualifications. -- Each applicant who is an individual and each individual who controls an applicant, as provided in subsection (c) section six of this article, shall be of good moral character, honesty and integrity and shall have the necessary experience and financial ability to successfully carry out the functions of a West Virginia Lottery table games supplier. The commission may adopt rules establishing additional requirements for a West Virginia Lottery table games supplier. The commission may accept licensing by another jurisdiction, specifically determined by the commission to have
similar licensing requirements, as evidence the applicant meets West Virginia Lottery table games supplier licensing requirements.

(c) Supplier specifications. -- An applicant for a license to supply gaming equipment or services to a racetrack table games licensee shall demonstrate that the gaming equipment or services that the applicant plans to offer to the racetrack table games licensee conform or will conform to standards established by rules of the commission and applicable state law. The commission may accept gaming equipment or services approval by another jurisdiction, specifically determined by the commission to have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(d) License application requirements. -- An applicant for a license to supply a racetrack table games licensee shall:

(1) Submit an application to the commission in the form the commission requires including adequate information to serve as a basis for a thorough background check;

(2) Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and
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(3) Pay to the commission a nonrefundable application and license fee for deposit into the Racetrack Table Games Fund in the amount of one hundred dollars, which shall be in lieu of the first year’s license fee provided in subsection (g) of this section.

(e) Authorization. -- A license to supply a racetrack table games licensee authorizes the licensee to sell or lease gaming equipment or offer services to a racetrack with West Virginia Lottery table games while the license is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional licenses pending completion of final action on an application.

(f) Inventory. -- A licensed table games supplier shall submit to the commission a list of all gaming equipment and services sold, delivered to or offered to a racetrack with West Virginia Lottery table games in this state when required by the commission.

(g) Fees, expiration date and renewal. -- A licensed table games supplier shall pay to the commission an annual license fee of one hundred dollars for an initial term beginning prior to the date of the supplier’s first sale to a racetrack table games licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a license to supply a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use supplies acquired from a licensed table games supplier while that supplier was licensed, notwithstanding the expiration of the supplier’s license, unless the commission finds a defect in those gaming supplies.
§29-22C-13. License to be employed in a racetrack with West Virginia Lottery table games.

(a) Licenses. -- The commission shall issue a license to be employed in the operation of racetrack table games to a person who meets the requirements of this section.

(b) License qualifications. -- To qualify for a license to be employed in the operation of West Virginia Lottery table games, the applicant shall be an individual of good moral character, honesty and integrity, and have been offered employment by the racetrack table games licensee contingent upon licensure pursuant to the provisions of this section. The commission by rule may establish different specific requirements for each job classification that may be created by the commission to recognize the extent to which a particular job classification has the ability to impact the proper operation of West Virginia Lottery table games.

(c) License application requirements. -- An applicant for a license to be employed by a racetrack with West Virginia Lottery table games in a position or to perform duties for which a license is required under this article or rules of the commission shall:

(1) Submit an application to the commission in the form required by the commission for each job classification including adequate information to serve as a basis for a thorough background check;

(2) Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation
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30 Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and

36 (3) Pay to the commission a nonrefundable application fee for deposit into the Racetrack Table Games Fund in the amount of one hundred dollars. The fee may be paid on behalf of an applicant by the employer.

40 (d) Authorization. -- A license to be employed by a racetrack with West Virginia Lottery table games permits the licensee to be employed in the capacity designated by the commission with respect to the license while the license is still active.

45 (e) Renewal fee and form. -- Each licensed employee shall pay to the commission an annual license fee set by the commission by rule by the thirtieth day of June of each year. The fee may vary based on the job classification of the applicant, but in no event shall it exceed one hundred dollars. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall submit a renewal application on the form required by the commission.

§29-22C-14. License to be a provider of management services.

1 (a) License. -- The commission may issue a license to a person providing management services under a management services contract to a racetrack table games licensee when the commission determines that the person meets the requirements of this section and any applicable rules of the commission.
(b) **License qualifications.** -- Each applicant who is an individual and each individual who controls an applicant, as provided in subsection (c), section six of this article, shall be of good moral character, honesty and integrity and shall have the necessary experience and financial ability to successfully carry out the functions of a management services provider. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, specifically determined by the commission to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) **Management service provider specifications.** -- An applicant for a license to provide management services to a racetrack table games licensee shall demonstrate that the management services that the applicant plans to offer to the racetrack table games licensee conform or will conform to standards established by rules of the commission and applicable state law. The commission may accept management services provider approval by another jurisdiction, specifically determined by the commission to have management services, as evidence the applicant meets the standards established by the commission and applicable state law.

(d) **License application requirements.** -- An applicant for a license to provide management services to a racetrack table games licensee shall:

1. Submit an application to the commission in the form required by the commission including adequate information to serve as a basis for a thorough background check;

2. Submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State
Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require any applicant seeking the renewal of a license or permit to furnish fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation; and

(3) Pay to the commission a nonrefundable application and license fee for deposit into the Racetrack Table Games Fund in the amount of one hundred dollars, which shall be in lieu of the first year’s license fee provided in subsection (f) of this section.

(e) Authorization. -- A license to provide management services to a racetrack table games licensee authorizes the licensee to provide management services to a racetrack with West Virginia Lottery table games while the license is active. The commission may by rule establish the conditions which constitute an emergency under which the commission may issue provisional licenses pending completion of final action on an application.

(f) Fees, expiration date and renewal. -- A licensed provider of management services shall pay to the commission an annual license fee of one hundred dollars for an initial term beginning prior to the date of the provider’s first contract with a racetrack table games licensee and continuing through the end of the twelfth month thereafter whenever the licensee has paid the renewal fee and has continued to comply with all applicable statutory and rule requirements. The commission shall renew a license to provide management services to a racetrack with West Virginia Lottery table games annually thereafter. A racetrack table games licensee may continue to use the management
services provided by the management services provider while that provider was licensed, notwithstanding the expiration of the provider’s license, unless the commission finds the services provided are not conforming to standards established by rule of the commission and applicable state law.

§29-22C-15. License prohibitions.

(a) The commission may not grant any license pursuant to the provisions of this article if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device or gaming operation, or had a license revoked by any governmental authority of a state of the United States having responsibility for the regulation of gambling or gaming activities; or

(3) Has been convicted of a crime of moral turpitude, a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order.

(b) In the case of an applicant for a license to supply a racetrack with West Virginia Lottery table games, the commission may deny a license to any applicant, reprimand any licensee or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;
(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee’s voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee’s assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a racetrack table games license, the commission may deny a license to any applicant, reprimand any licensee or suspend or revoke a license:

(1) If the applicant or licensee knowingly employs an individual in a job classification which includes West Virginia Lottery table games management duties who has been convicted of a crime of moral turpitude, a gambling-related offense, or a theft or fraud offense under the laws of this state, another state, the United States or a territory of the United States or knowingly employs any individual in a job classification which includes West Virginia Lottery table games management duties who has had a license relating to the operation of a gaming activity revoked by this state or any other state;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation, which sells more than five percent of a licensee’s voting stock, or more than five percent of the voting stock of a corporation which controls the licensee or sells a licensee’s assets, other than those bought...
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and sold in the ordinary course of business, or any interest in the
assets, to any person not already determined by the commission
to have met the qualifications of a licensee under this article,
unless the sale has been approved in advance by the
commission.

§29-22C-16. License denial, revocation, suspension and reprimand.

(a) Notwithstanding any provision of subsection (b), section
thirteen of this article to the contrary, the commission may deny
a license to any applicant, reprimand any licensee, or suspend or
revoke a license if the applicant or licensee, or any person
having control of the applicant or licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain
a license for the applicant or licensee or another person;

(2) Fraudulently or deceptively uses a license;

(3) Is convicted of a felony under the laws of this state,
another state, the United States or a territory of the United
States; or

(4) Is convicted of a misdemeanor under the laws of this
state, another state, the United States or a territory of the United
States for gambling or a gambling related activity.

(b) Instead of or in addition to reprimanding a licensee or
suspending or revoking a license, the commission may impose
a civil penalty under section thirty-one of this article.

§29-22C-17. Hearing procedures.

(a) Right to a hearing. -- Except as otherwise provided by
law, before the commission takes any adverse action involving
a licensee under the provisions of this article, it shall give the
§29-22C-18. Notice of license expiration and renewal.

(a) At least two months before any license issued under this article expires, the commission shall send to the licensee, by mail addressed to the last known address of the licensee, a renewal application form and notice that states:

(1) The date on which the current license expires;
(2) The date by which the commission must receive the renewal application for the renewal to be issued and mailed before the existing license expires; and

(3) The amount of the renewal fee.

§29-22C-19. Miscellaneous license provisions.

(a) The commission shall include on each license that it issues:

(1) The type of license;

(2) The identity and address of the licensee;

(3) The effective date of the license;

(4) For employee licenses, the picture of the licensee; and

(5) Any other information the commission considers appropriate.

(b) Each racetrack table games licensee, licensed supplier of a racetrack with West Virginia Lottery table games or a licensed management services provider shall display the license conspicuously in its place of business or have the license readily available for inspection at the request of any agent of the commission or of a state, local or municipal law-enforcement agency.

(c) Each holder of a license to be employed by a racetrack with West Virginia Lottery table games shall carry the license on his or her person at all times when present in a racetrack with West Virginia Lottery table games and, if required by rules adopted by the commission with respect to the particular capacity in which the licensee is employed, have some indicia
of licensure prominently displayed on his or her person in accordance with the rules of the commission.

(d) Each person licensed under this article shall give the commission written notice of any change of address or any change of any other information provided in the licensee’s application for a license or for renewal of a license, as soon as the effective date of the change is known to the licensee but not later than thirty days after the change occurs.

§29-22C-20. Game rules of play; disputes.

(a) Each racetrack licensed as an agent of the commission authorized to operate West Virginia Lottery table games shall have written rules of play for each table game it operates that are approved by the commission before the table game is offered to the public. Rules of play proposed by a racetrack table games licensee may be approved, amended or rejected by the commission.

(b) All West Virginia Lottery table games shall be conducted according to the specific rules of play approved by the commission. All wagers and pay-offs of winning wagers shall be made according to those rules of play, which shall establish any limitations necessary to assure the vitality of table games operations.

(c) Each racetrack table game licensee shall make available in printed form to any patron, upon request of the patron, the complete text of the rules of play of any West Virginia Lottery table game in operation at its racetrack facility, pay-offs of winning wagers and any other advice to the player required by the commission.

(d) Patrons are considered to have agreed that the determination of whether the patron is a valid winner is subject
to the game play rules and, in the case of any dispute, will be
determined by the commission. The determination by the
commission shall be final and binding upon all patrons and shall
not be subject to further review or appeal.

§29-22C-21. Betting limits; operations and services.

(a) Notwithstanding anything to the contrary contained
elsewhere in this article, a racetrack licensee may, as agent of
the commission, in the exercise of its business judgment,
determine and establish with the approval of the commission,
with respect to West Virginia lottery table games, the following:

(1) Minimum and maximum wagers;

(2) Advertising and promotional activities, and the offering
of any complimentary to a player, subject to the standards
provided in section twenty-three of this article and rules of the
commission;

(3) Hours of operation;

(4) The days during which games may be played; and

(5) Currency denominations accepted by any mechanical or
electronic bill acceptors.

(b) Notwithstanding anything to the contrary contained
elsewhere in this chapter, the commission may establish the
following parameters for any commission regulated lottery
game of any kind which is played at a licensed racetrack:

(1) Minimum and maximum payout percentages;

(2) Any probability limits of obtaining the maximum payout
for a particular play; and
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(3) Limitations on the types and amounts of financial transactions, including extension of credit to a patron, which a racetrack can enter into with its patrons.


A racetrack table game licensee shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum wagers pertaining at that table. A racetrack table games licensee may not require any wager to be greater than the stated minimum or less than the stated maximum. However, any wager actually made by a patron and not rejected by a racetrack table games licensee prior to the commencement of play shall be treated as a valid wager.

§29-22C-23. Complimentary service, gift, cash or other item.

(a) No racetrack table games licensee may offer or provide any complimentary service, gift, cash or other item of value to any person unless:

(1) The complimentary consists of room, food, beverage or entertainment expenses provided directly to the patron and his or her guests by the racetrack table games licensee or indirectly to the patron and his or her guests on behalf of the licensee by a third party;

(2) The complimentary consists of documented transportation expenses provided directly to the patron and his or her guests on behalf of a racetrack table games licensee by a third party, provided that the licensee complies with the rules promulgated by the commission to ensure that a patron’s and his or her guests’ documented transportation expenses are paid for or reimbursed only once; or
(3) The complimentary consists of coins, tokens, cash or other complimentary items or services provided through any complimentary distribution program, the terms of which shall be filed with the commission upon implementation of the program or maintained pursuant to commission rule. Any change in the terms of a complimentary program shall be filed with the commission upon implementation of the change.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, a racetrack table games licensee may offer and provide complimentary cash or non-cash gifts that are not otherwise included in that subsection to any person: Provided, That any complimentary cash or non-cash gifts in excess of an amount per trip to be set by interpretive rule of the commission, are supported by documentation regarding the reason the gift was provided to the patron and his or her guests, including where applicable a patron’s player rating. The documentation shall be maintained by a racetrack table games licensee in accordance with commission rules. For purposes of this subsection, all gifts presented to a patron and a patron’s guests directly by the racetrack table games licensee or indirectly on behalf of the licensee by a third party within any five-day period shall be considered to have been made during a single trip.

§29-22C-24. Law enforcement.

(a) Generally. – Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to gaming as such occurs at facilities of the type authorized by this article that are necessary to enforce the provisions of this article.

(b) Costs. – The cost of services provided by the West Virginia State Police pursuant to a contract or cooperative
agreement entered into pursuant to the provisions of subsection (a) of this section, including, but not limited to necessary training costs, shall be paid by the commission as an administrative expense.

(c) Notwithstanding any provision of this code to the contrary, the West Virginia State Police shall have exclusive jurisdiction over felony offenses committed on the grounds of any racetrack licensed under the provisions of this article.

§29-22C-25. Inspection and seizure.

As a condition of licensure, to inspect or investigate for criminal violations of this article or violations of the rules promulgated by the commission, the commission’s agents and the West Virginia State Police may each, without notice and without warrant:

(1) Inspect and examine all premises of the racetrack with West Virginia Lottery table games, gaming devices, the premises where gaming equipment is manufactured, sold, distributed or serviced or any premises in which any records of the activities are prepared or maintained;

(2) Inspect any gaming equipment in, about, upon or around the premises of a racetrack with West Virginia Lottery table games;

(3) Seize summarily and remove from the premises and impound any gaming equipment for the purposes of examination, inspection or testing;

(4) Inspect, examine and audit all books, records, and documents pertaining to a racetrack table games licensee’s operation;
(5) Summarily seize, impound or assume physical control of any book, record, ledger, table game, gaming equipment or device, cash box and its contents, counting room or its equipment or West Virginia Lottery table games operations; and

(6) Inspect the person, and the person’s personal effects present on the grounds of a licensed racetrack with West Virginia Lottery table games, of any holder of a license issued pursuant to this article, while that person is present on the grounds of a licensed racetrack with West Virginia Lottery table games.

§29-22C-26. Tax on the privilege of holding a license to operate West Virginia Lottery table games.

(a) **Imposition and rate of tax.** -- For the privilege of holding a license under this article to operate table games, there is levied and shall be collected from the racetrack table games licensee the annual privilege tax imposed by this section. The tax shall be thirty-five percent of the licensee’s adjusted gross receipts from the operation of West Virginia Lottery table games. For purposes of calculating the amount of tax due under this section, the licensee shall use the accrual method of accounting.

(b) **Tax returns and payment of tax.** --

(1) The annual tax levied by subsection (a) of this section is due and payable to the commission in weekly installments on or before the Wednesday of the calendar week following the week in which the adjusted gross receipts were received and the tax accrued.

(2) The racetrack table games licensee shall, on or before Wednesday of each week, make out and submit by electronic communication to the commission, a return for the preceding week, in the form prescribed by the commission, showing:
(A) The total gross receipts and adjusted gross receipts from operation of West Virginia Lottery table games during that week;

(B) The amount of tax for which the racetrack table games licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax required by the commission.

(3) The amount of tax shown to be due on the return shall be remitted by electronic funds transfer simultaneously with the filing of the return. All payments received pursuant to this section shall be deposited in the Racetrack Table Games Fund in accordance with the provisions of section twenty-seven of this article.

(4) When adjusted gross receipts for a week is a negative number because the winnings paid to patrons wagering on the racetrack’s West Virginia Lottery table games exceeds the racetrack’s gross receipts from the purchase of table game tokens, chips or electronic media by patrons, the commission shall allow the licensee to, pursuant to rules of the commission, carry over the negative amount of adjusted gross receipts to returns filed for subsequent weeks. The negative amount of adjusted gross receipts may not be carried back to an earlier week and the commission is not required to refund any tax received by the commission, except when the licensee surrenders its license to act as agent of the commission in operating West Virginia lottery table games under this article and the licensee’s last return filed under this section shows negative adjusted gross receipts. In that case, the commission shall multiply the amount of negative adjusted gross receipts by the applicable rate of tax and pay the amount to the licensee, in accordance with rules of the commission.
(c) Tax imposed by this section is in lieu of other taxes.—

(1) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all other state taxes and fees imposed on the operation of, or the proceeds from operation of West Virginia Lottery table games, except as otherwise provided in this section.

The Consumers Sales and Services Tax imposed pursuant to article fifteen, chapter eleven of this code, shall not apply to the licensee’s gross receipts from any wagering on West Virginia Lottery table games authorized pursuant to this article or to the licensee’s purchase of gaming equipment, supplies or services directly used in operation of the table games authorized by this article. These purchases are also exempt from the Use Tax imposed by article fifteen-a, chapter eleven of this code.

(2) With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the tax imposed by this section is in lieu of all local taxes and fees levied on or imposed with respect to the privilege of offering West Virginia Lottery table games to the public, including, but not limited to, the municipal business and occupation taxes and amusement taxes authorized by article thirteen, chapter eight of this code, and the municipal sales and service tax and use taxes authorized by article thirteen-c, chapter eight of this code.

(d) Prohibition on credits. -- Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the tax imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment, or for any investment in real property, or in improvements to the real property, that is used in the operation of West Virginia Lottery table games.
§ 29-22C-27. West Virginia Lottery Racetrack Table Games Fund; Community Based Service Fund; State Debt Reduction Fund; distribution of funds.

(a) (1) There is hereby created and established a special fund in the State Treasury to be known as the West Virginia Lottery Racetrack Table Games Fund and all tax collected under this article shall be deposited with the State Treasurer and placed in the West Virginia Lottery Racetrack Table Games Fund. The Fund shall be an interest bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund.

(2) Notwithstanding any provision of this article to the contrary, all racetrack table games license fees received by the commission pursuant to section eight of this article shall be deposited into the Community Based Service Fund which is hereby created in the State Treasury. Moneys of the fund shall be expended by the Bureau of Senior Services upon appropriation of the Legislature solely for the purpose of enabling the aged and disabled citizens of this state to maintain their residency in the community based setting through the provision of home and community based services.

(b) From the gross amounts deposited into the Racetrack Table Games Fund pursuant to subsection (a) of this section, the commission shall:

(1) Retain an amount for the administrative expenses of the commission as determined by the commission in accordance with subsection (d) of this section;

(2) Transfer two and one-half percent of adjusted gross receipts from all thoroughbred racetracks with West Virginia Lottery table games to the special funds established by each thoroughbred racetrack table games licensees for the payment
of regular racetrack purses, such amount being divided equally
between such special funds of each thoroughbred racetrack table
games licensee and transfer two and one-half percent of adjusted
gross receipts from all greyhound racetracks with West Virginia
Lottery table games to the special funds established by each
greyhound racetrack table games licensees for the payment of
regular racetrack purses, such amount being divided equally
between such special funds of each greyhound racetrack table
games licensee;

(3) Transfer two percent of the adjusted gross receipts from
all licensed racetracks to the Thoroughbred Development Fund
created under section thirteen-b, article twenty-three, chapter
nineteen of this code and the Greyhound Breeding Development
Fund created under section ten, article twenty-three, chapter
nineteen of this code. The total amount transferred under this
subdivision shall be divided pro rata among the development
funds for each racetrack table games licensee based on relative
adjusted receipts from each racetrack. No portion of the
amounts transferred to these funds may be used for the benefit
of any person or activity other than at or associated with a
racetrack table games licensee;

(4) Transfer one percent of the adjusted gross receipts from
each licensed racetrack to the county commissions of the
counties where racetracks with West Virginia Lottery table
games are located. The one percent transferred under this
subdivision shall be divided pro rata among the counties with a
racetrack with West Virginia Lottery table games based on
relative adjusted gross receipts from each county’s racetrack:
Provided, That the county board of education of a growth
county, as that term is defined in section three, article twenty,
chapter seven of this code, which has enacted the Local Powers
Act, and in which county 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-one, shall receive one percent of adjusted
gross receipts as provided in this subdivision for the purpose of
capital improvements;

(5) Transfer two percent of the adjusted gross receipts from
each licensed racetrack to the governing bodies of
municipalities within counties where racetracks with West
Virginia Lottery table games are located, which shall be
allocated as follows:

(A) One half of the amounts transferred under this
subdivision shall be allocated to the municipalities within each
county having a racetrack table games licensee, based on
relative adjusted gross receipts from West Virginia Lottery table
games from those racetracks and the total amount allocated to
the municipalities within a county shall be divided pro rata
among the municipalities based on each municipality’s
population determined at the most recent United States
decennial census of population: Provided, That: (i) For each
allocation, when a municipality is physically located in two or
more counties, only that portion of its population residing in the
county where the authorized table games are located shall be
considered; (ii) no single municipality in a county where West
Virginia Lottery racetrack table games are played may receive
a total share under this part A that is in excess of seventy-five
percent of the total distribution under this part A for the county
in which the municipality is located; and (iii) no municipality
receiving moneys under this part A shall receive an amount
which is less than that received by a municipality under
provisions of subdivision four, subsection (c) of this section;
and

(B) One half of the amounts transferred under this
subdivision shall be allocated pro rata to the municipalities
within all the counties having a racetrack table games licensee
based on each municipality's population determined at the most
recent United States decennial census of population: Provided,
That: (i) No municipality which received funds above its pro
rata share pursuant to subpart (iii) of part A above shall receive
an allocation under this part B; (ii) for each allocation, when a
municipality is physically located in two or more counties, only
that portion of its population residing in the county where the
authorized table games are located shall be considered; and (iii)
no single municipality in a county where West Virginia Lottery
racetrack games are played may receive a total share under this
part B that is in excess of twenty-five percent of the total
transfers under this part B: Provided, however, That the county
board of education of a growth county, as that term is defined in
section three, article twenty, chapter seven of this code, which
has enacted the Local Powers Act, and in which county 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-one, shall
receive the two percent of adjusted gross receipts as provided in
this subdivision for the purpose of capital improvements;

(6) Transfer one half of one percent of the adjusted gross
receipts to the governing bodies of municipalities in which a
racetrack table games licensee is located, which municipalities
shall each receive an equal share of the total amount allocated
under this subdivision: Provided, That no distribution under this
subdivision shall be made to any municipality which did not
have a licensed racetrack within its municipal boundaries as
they existed on the first day of January, two thousand seven:
Provided, however, That if no racetrack table games licensee is
located within a municipality, no transfer shall be made under
this subdivision; and

(7) Distribute the remaining amounts, hereinafter referred
to as the net amounts in the Racetrack Table Games Funds, in
accordance with the provisions of subsection (c) of this section.
(c) From the net amounts in the Racetrack Table Games Fund, the commission shall:

(1) Transfer seventy-six percent to the State Debt Reduction Fund, which is hereby created in the State Treasury. Moneys of the fund shall be expended solely for the purpose of accelerating the reduction of existing unfunded liabilities and existing bond indebtedness of the state and shall be expended or transferred only upon appropriation of the Legislature;

(2) Transfer four percent, divided pro rata based on relative adjusted gross receipts from the individual licensed racetracks for and on behalf of all employees of each licensed racing association, into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of each licensed racing association;

(3) Transfer ten percent, to be divided and paid in equal shares, to each county commission in the state that is not eligible to receive a distribution under subdivision four, subsection (b) of this section: Provided, That funds transferred to county commissions under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements.

(4) Transfer ten percent, to be divided and paid in equal shares, to the governing bodies of each municipality in the state that is not eligible to receive a distribution under subdivisions five and six, subsection (b) of this section: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

(d) All expenses of the commission incurred in the administration and enforcement of this article shall be paid from
the Racetrack Table Games Fund, including reimbursement of
state law-enforcement agencies for services performed at the
request of the commission pursuant to this article. At no time
may the commission's expenses associated with a particular
racetrack with authorized table games under this article exceed
three percent of the total annual adjusted gross receipts received
from that licensee's operation of table games under this article,
including, but not limited to, all license fees or other amounts
attributable to the licensees operation of table games under this
article. These expenses shall either be allocated to the racetrack
with West Virginia Lottery table games for which the expense
is incurred, if practicable, or be treated as general expenses
related to all racetrack table games facilities and be allocated pro
rata among the racetrack table games facilities based on the ratio
that annual adjusted gross receipts from operation of table
games at each racetrack with West Virginia Lottery table games
bears to total annual adjusted gross receipts from operation of
table games at all racetracks with West Virginia Lottery table
games during the fiscal year of the state. From this allowance,
the commission shall transfer at least one hundred thousand but
not more than five hundred thousand dollars into the
Compulsive Gambling Treatment Fund created in section
nineteen, article twenty-two-a of this chapter.


(a) A racetrack table games licensee may receive wagers
only from an individual physically present in a designated
gaming area at a licensed racetrack with West Virginia Lottery
table games.

(b) All racetracks with West Virginia Lottery table games
shall use a method of wagering whereby the table game player’s
money for wagering on table games is, at the request of the
player, converted to tokens, electronic cards or other electronic
media, or chips at the table or elsewhere at the licensed racetrack.

(1) The tokens, electronic cards or other electronic media, or chips issued by a licensee racetrack with West Virginia Lottery table games can only be used for wagering at that racetrack.

(2) Wagering on West Virginia Lottery table games may not be conducted with money or other negotiable currency or with tokens, electronic cards or other electronic media or chips not issued by the racetrack where the table games will be played.

(3) At the request of the player, the licensee shall convert a player’s tokens, electronic cards or other electronic media or chips back to money.

(4) The licensee may not charge a fee for converting a player’s money to an acceptable media for play at a gaming table or charge a fee for converting the acceptable media for wagering at a gaming table back to money.

(c) No licensed racetrack employee may place a wager on any table game at the employer’s racetrack.

§29-22C-29. Offenses and penalties.

(a) A racetrack table games licensee is guilty of unlawful operation when:

(1) The licensee operates a West Virginia Lottery table game without authority of the commission to do so;

(2) The licensee operates a West Virginia Lottery table game in any location that is not a designated gaming area approved by the commission;
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(3) The licensee knowingly conducts, carries on, operates or exposes for play or allows to be conducted, carried on, operated or exposed for play any table game or other device, equipment or material that has in any manner been tampered with or placed in a condition or operated in a manner, the result of which is designed to deceive the public;

(4) The licensee employs an individual in a position or to perform duties, for which a license is required by this article or rules of the commission and the employee does not have a license issued under the provisions of this article or the licensee continues to employ the individual in a position or to perform duties, for which a license is required by this article or rules of the commission, after the employee’s license expired, was revoked by the commission or not renewed by the commission;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in a West Virginia Lottery table game at the licensed racetrack;

(6) The licensee knowingly permits an individual under the age of twenty-one years of age to enter or remain in a designated gaming area or to play racetrack video lottery terminals or West Virginia Lottery table games at a licensed racetrack authorized under this article to act as the commission’s agent in operating the West Virginia Lottery table games; or

(7) The licensee exchanges tokens, chips, electronic media or other forms of credit to be used for wagering at a licensed racetrack authorized under this article to operate West Virginia Lottery table games, for anything of value except in exchange for money or credits to a player’s account.

(b) A person is guilty of a misdemeanor when:
(1) The person knowingly makes a false statement on any application for a license under this article or on an application for renewal of a license issued under this article;

(2) The person operates, carries on or exposes for play a West Virginia Lottery table game prior to obtaining a license or after the person’s license has expired and prior to actual renewal of the license or before the West Virginia Lottery table game and the licensee’s rules for play of the game are approved or modified and approved by the commission; or

(3) The person works or is employed in a position requiring a license under the provisions of this article without having the license required by this article.

(c) A person is guilty of a felony when:

(1) The person offers, promises or gives anything of value or benefit to a person who has an ownership or financial interest in, is employed by or has a service contract with, a racetrack with West Virginia Lottery table games or to that person’s spouse or any dependent child or dependent parent, pursuant to an agreement or arrangement, in fact or implied from the circumstances, with intent that the promise or thing of value or benefit will influence the actions of the person in order to affect or attempt to affect the outcome of a West Virginia Lottery table game, or to influence official action of the commission. For the purposes of this subdivision and subdivision (2) of this subsection, the term “person who is connected with a table games facility” includes, but is not limited to, a person licensed under this article as well as an officer or employee of a licensee;

(2) The person solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with a racetrack with West Virginia Lottery table games, pursuant to an understanding or arrangement in fact or
implied from the circumstances, with the intent that the promise
or thing of value or benefit will influence the actions of the
person to affect or attempt to affect the outcome of a West
Virginia Lottery table game or to influence official action of the
commission; or

(3) The person uses or possesses on property owned by the
licensed racetrack or on property contiguous to the licensed
racetrack, with the intent to use, an electronic, electrical or
mechanical device that is designed, constructed or programmed
to assist the user or another person:

(A) In projecting the outcome of a West Virginia Lottery
table game;

(B) In keeping track of the cards dealt or in play;

(C) In analyzing the probability of the occurrence of an
event relating to a West Virginia Lottery table game;

(D) In analyzing the strategy for playing or betting to be
used in a West Virginia Lottery table game, except as permitted
in writing by the commission; or

(E) In obtaining an advantage at playing any West Virginia
Lottery table game at a licensed racetrack authorized under this
article to operate West Virginia Lottery table games;

(4) The person manufactures, sells or distributes any card,
chip, die, game or device, by whatever name called, that is
intended by that person to be used to violate any provision of
this article or the table gaming laws of any other state;

(5) The person places a bet after unlawfully acquiring
knowledge of the outcome of the West Virginia Lottery table
game that is the subject of the bet or aids a person in acquiring
that knowledge for the purpose of placing a bet contingent on
(6) The person claims, collects, takes or attempts to claim, collect or take anything of value into or from a racetrack with West Virginia Lottery table games, with intent to defraud, without having made a wager contingent on winning a West Virginia Lottery table game or knowingly claims, collects or takes an amount of money or thing of value of greater value than the amount won;

(7) The person knowingly uses chips, electronic media or tokens that are counterfeit to place a wager at a racetrack with West Virginia Lottery table games;

(8) The person knowingly uses any medium to place a wager at a racetrack licensed under this article other than tokens, chips, electronic cards or other electronic media, or other method of credit approved by the commission and issued by the racetrack licensed under this article at which the wager is placed on a West Virginia Lottery table game;

(9) The person, not a licensed racetrack under this article or an employee or agent of a racetrack licensed under this article acting in furtherance of the licensee’s interest, has in his or her possession on grounds owned by the racetrack licensed under this article or on grounds contiguous to the licensed racetrack, any device, by whatever name called, intended to be used to violate a provision of this article or a rule of the commission implementing or explaining a provision of this article; or

(10) The person, not a licensee or employee or agent of a licensee acting in furtherance of the racetrack table games licensee’s interests, has in his or her possession any key or device designed for the purpose of opening, entering or affecting the operation of a West Virginia Lottery table game,
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drop box or an electronic or mechanical device connected with
or used in connection with a West Virginia Lottery table game
in a licensed racetrack or for removing bills, tokens, chips or
other contents therefrom.

(d) Any person who violates any provision of subsection (a)
or (b) of this section is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than one thousand
dollars and committed to a state correctional facility for not
more than six months, except that in the case of a person other
than a natural person, the amount of the fine imposed may not
be more than twenty-five thousand dollars.

(e) Any person who violates any provision of subsection (c)
of this section is guilty of a felony and, upon conviction thereof,
shall be fined not less than five thousand dollars nor more than
ten thousand dollars and committed to a state correctional
facility for a term of imprisonment not less than one year nor
more than five years.

(f) With regard to subdivision (3), subsection (c) of this
section, each racetrack table games licensee shall post notice of
this prohibition and the penalties of this section in a manner
determined by the commission.

§29-22C-30. Forfeiture of property.

(a) Anything of value, including all traceable proceeds,
including, but not limited to, real and personal property,
moneys, negotiable instruments, securities and conveyances, is
subject to forfeiture to the State of West Virginia if the item is
used for any of the following:

(1) As a bribe intended to affect the outcome of a West
Virginia Lottery table game in a licensed racetrack; or
In exchange for, or to facilitate, a violation of this article.

The Legislature finds and declares that the seizure and sale of items under the provisions of this section is not contemplated to be a forfeiture as that term is used in section 5, article XII of the Constitution of West Virginia and, to the extent that a seizure and sale may be found to be such a forfeiture, the Legislature hereby finds and declares that the proceeds from a seizure and sale under this article are not part of net proceeds as it is contemplated by section five, article XII of the Constitution of West Virginia.

If the forfeited property includes the racetrack real property and all of its improvements and related personal property, the commission may take control of and operate the racetrack and all related functions until the forfeited property is sold or is returned to the licensee as a result of due process proceedings.

Subsection (a) of this section does not apply if the act or omission that gives rise to the forfeiture is committed or omitted without the actual or reasonably implied knowledge or consent of the owner of the property to be forfeited.

§29-22C-31. Civil penalties.

The commission may impose on any person who violates the provisions of this article a civil penalty not to exceed fifty thousand dollars for each violation, whether or not the person is licensed under this article.

The provisions of article five, chapter twenty-nine-a of this code apply to any civil penalty imposed pursuant to the provisions of this section.
§29-22C-32. Preemption.

No local law or rule providing any penalty, disability, restriction, regulation or prohibition for operating a racetrack with West Virginia Lottery table games or supplying a licensed racetrack may be enacted, and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this article.

§29-22C-33. Exemption from federal law.

Pursuant to section 2 of chapter 1194, 64 Stat. 1134, 15 U.S.C. 1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from chapter 1194, 64 Stat. 1134, 15 U.S.C. 1171 to 1178.

§29-22C-34. Shipment of gambling devices.

All shipments of gambling devices, including video lottery machines, to licensed racetracks in this state, the registering, recording, and labeling of which have been completed by the manufacturer or dealer thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178, are legal shipments of gambling devices into the State of West Virginia.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-1. Authorization of limited gaming facility; findings; intent.

(a) Operation of authorized games of chance. -- Notwithstanding any provision of law to the contrary, the operation of West Virginia lottery games permitted by this article and the related operation of a gaming facility and ancillary activities is not unlawful when conducted under the
(b) Legislative findings. -- The Legislature finds and declares that the tourism industry plays a critical role in the economy of this state and that a substantial state interest exists in protecting that industry. It further finds and declares that the authorization of the operation of a gaming facility at no more than one well-established historic resort hotel in this state as provided in this article will serve to protect and enhance the tourism industry, and indirectly other segments of the economy of this state, by providing a resort hotel amenity which is becoming increasingly important to many actual and potential resort hotel patrons.

The Legislature finds and declares that video lottery operations pursuant to subsection (c), section three of this article and the operation of the other authorized games of chance permitted by this article constitute the operation of lotteries within the purview of section thirty-six, article VI of the Constitution of West Virginia.

(c) Legislative intent. -- It is the intent of the Legislature in the enactment of this article to promote tourism and year-round employment in this state. It is expressly not the intent of the Legislature to promote gaming. As a consequence, it is the intent of the Legislature to allow limited gaming as authorized by this article and article twenty-two-c of this chapter with all moneys gained from the operation of the gaming facility, other than those necessary to reimburse reasonable costs of operation, to inure to the benefit of the state.
AN ACT to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-1A-23 of said code; to amend and reenact §11-10-5d of said code; and to amend and reenact §11A-2-2 of said code, all relating to local taxation; defining "charitable exemptions" for purposes of the municipal business and occupation tax; authorizing disclosure of property tax data by the assessor to the sheriff and municipal finance officers; authorizing the Division of Taxation to share with local tax collection authorities federal employer identification numbers; and authorizing the costs incurred to collect delinquent taxes to be shared by all levying bodies.

Be it enacted by the Legislature of West Virginia:

That §8-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-1A-23 of said code be amended and reenacted; that §11-10-5d of said code be amended and reenacted; and that §11A-2-2 of said code be amended and reenacted, all to read as follows:

Chapter
  11. Taxation.
  11A. Collection and Enforcement of Property Taxes.
ARTICLE 13. TAXATION AND FINANCE.

§8-13-5. Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.

(a) Authorization to impose tax. -- (1) Whenever any business activity or occupation, for which the state imposed its annual business and occupation or privilege tax under article thirteen, chapter eleven of this code, prior to July one, one thousand nine hundred eighty-seven, is engaged in or carried on within the corporate limits of any municipality, the governing body thereof shall have plenary power and authority, unless prohibited by general law, to impose a similar business and occupation tax thereon for the use of the municipality.

(2) Municipalities may impose a business and occupation or privilege tax upon every person engaging or continuing within the municipality in the business of aircraft repair, remodeling, maintenance, modification and refurbishing services to any aircraft or to an engine or other component part of any aircraft as a separate business activity.

(b) Maximum tax rates. -- In no case shall the rate of such municipal business and occupation or privilege tax on a particular activity exceed the maximum rate imposed by the state, exclusive of surtaxes, upon any business activities or privileges taxed under sections two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and two-j, article thirteen of said chapter eleven, as such rates were in effect under said article thirteen, on January one, one thousand nine hundred fifty-nine, or in excess of one percent of gross income under section two-k of said article thirteen, or in excess of three tenths of one percent of
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gross value or gross proceeds of sale under section two-m of said article thirteen. The rate of municipal business and occupation or privilege tax on the activity described in subdivision (2), subsection (a) of this section shall be ten one-hundredths of one percent. The rate of municipal business and occupation or privilege tax on the activity of a health maintenance organization holding a certificate of authority under the provisions of article twenty-five-a, chapter thirty-three of this code, shall not exceed one half of one percent to be applied solely to that portion of gross income received from the Medicaid program pursuant to Title XIX of the Social Security Act, the state employee programs administered by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code, and other federal programs, for health care items or services provided directly or indirectly by the health maintenance organization, that is expended for administrative expenses; and shall not exceed one half of one percent to be applied to the gross income received from enrollees, or from employers on behalf of enrollees, from sources other than Medicaid, state employee programs administered by the Public Employees Insurance Agency and other federal programs for health care items or services provided directly or indirectly by the health maintenance organization: Provided, That this tax rate limitation shall not extend to that part of the gross income of health maintenance organizations which is received from the use of real property other than property in which any such company maintains its office or offices in this state, whether such income is in the form of rentals or royalties. This provision concerning the maximum municipal business and occupation tax rate on the activities of health maintenance organizations is effective beginning after the thirty-first day of December, one thousand nine hundred ninety-six. Any payments of business and occupation tax made by a health maintenance organization to a municipality for calendar year one thousand nine hundred ninety-seven shall not be subject to recovery by the health maintenance organization.
Administrative expenses shall include all expenditures made by a health maintenance organization other than expenses paid for claims incurred or payments made to providers for the benefits received by enrollees.

(c) Effective date of local tax. -- Any taxes levied pursuant to the authority of this section may be made operative as of the first day of the then current fiscal year or any date thereafter: Provided, That any new imposition of tax or any increase in the rate of tax upon any business, occupation or privilege taxed under section two-e of said article thirteen shall apply only to gross income derived from contracts entered into after the effective date of such imposition of tax or rate increase, and which effective date shall not be retroactive in any respect: Provided, however, That no tax imposed or revised under this section upon public utility services may be effective unless and until the municipality provides written notice of the same by certified mail to said public utility at least sixty days prior to the effective date of said tax or revision thereof.

(d) Exemptions. -- A municipality shall not impose its business and occupation or privilege tax on any activity that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of said chapter eleven, prior to July one, one thousand nine hundred eighty-seven, and determined without regard to any annual or monthly monetary exemption also specified therein: Provided, That on and after the first day of July, two thousand seven, a municipality may impose its business and occupation or privilege tax on any activity of a corporation, association or society organized and operated exclusively for religious or charitable purposes that was exempt from the state's business and occupation tax under the provisions of section three, article thirteen of chapter eleven, prior to July one, one thousand nine hundred eighty-seven, but only to the extent that the income generated by the activity is subject to taxation under the

(e) *Activity in two or more municipalities.* -- Whenever the business activity or occupation of the taxpayer is engaged in or carried on in two or more municipalities of this state, the amount of gross income, or gross proceeds of sales, taxable by each municipality shall be determined in accordance with such legislative regulations as the Tax Commissioner may prescribe. It being the intent of the Legislature that multiple taxation of the same gross income, or gross proceeds of sale, under the same classification by two or more municipalities shall not be allowed, and that gross income, or gross proceeds of sales, derived from activity engaged in or carried on within this state, that is presently subject to state tax under section two-c or two-h, article thirteen, chapter eleven of this code, which is not taxed or taxable by any other municipality of this state, may be included in the measure of tax for any municipality in this state, from which the activity was directed, or in the absence thereof, the municipality in this state in which the principal office of the taxpayer is located. Nothing in this subsection shall be construed as permitting any municipality to tax gross income or gross proceeds of sales in violation of the Constitution and laws of this state or the United States, or as permitting a municipality to tax any activity that has a definite situs outside its taxing jurisdiction.

(f) Where the governing body of a municipality imposes a tax authorized by this section, such governing body shall have the authority to offer tax credits from such tax as incentives for new and expanding businesses located within the corporate limits of the municipality.

(g) *Administrative provisions.* -- The ordinance of a municipality imposing a business and occupation or privilege tax shall provide procedures for the assessment and collection
of such tax, which shall be similar to those procedures in article
thirteen, chapter eleven of this code, as in existence on June
thirtieth, one thousand nine hundred seventy-eight, or to those
procedures in article ten, chapter eleven of this code, and shall
conform with such provisions as they relate to waiver of
penalties and additions to tax.

CHAPTER 11. TAXATION.

Article
1A. Appraisal of Property.
10. Procedure and Administration.

ARTICLE 1A. APPRAISAL OF PROPERTY.

§11-1A-23. Confidentiality and disclosure of property tax returns
and return information; offenses; penalties.

(a) Secrecy of returns and return information. -- Property
tax returns and return information filed or supplied pursuant to
this article and articles three, four, five and six of this chapter
and information obtained by subpoena or subpoena duces tecum
issued under the provisions of this article shall be confidential
and except as authorized in this section, no officer or employee
of the State Tax Department, county assessors, county
commissions and the board of public works shall disclose any
return or return information obtained by him or her, including
such return information obtained by subpoena, in any manner in
connection with his or her service as such an officer, member or
employee: Provided, That nothing herein shall make
confidential the itemized description of the property listed, in
order to ascertain that all property subject to assessment has
been subjected to appraisal: Provided, however, That the
commissioner and the assessors shall withhold from public
disclosure the specific description of burglar alarms and other
similar security systems held by any person, stocks, bonds and
other personal property held by a natural person, except motor
vehicles and other tangible property utilized publicly, and shall
withhold from public disclosure information claimed by any
taxpayer to constitute a trade secret or confidential patent information: Provided further, That such property descriptions withheld from public disclosure shall be subject to production and inspection in connection with any review, protest or intervention in the appraisal or assessment process, under such reasonable limitations as the board of review, board of equalization and review or court shall require. The term officer or employee includes a former officer, member or employee.

(b) Disclosure. -- (1) Information made confidential by subsection (a) of this section shall be open to inspection by or disclosure to officers, members and employees of the State Tax Department, county assessors, county commissions, county sheriffs, municipal financial officers and to members of the board of public works whose official duties require such inspection or disclosures for property tax administration purposes. Disclosure may be made to persons, or officers or employees thereof, who are employed by the state Tax Commissioner by contract or otherwise, provided such person, or officer or employee thereof, shall be subject to the provisions of this section as fully as if he or she was an officer or employee of the State Tax Department. Information made confidential by subsection (a) of this section shall be open to inspection by the property owner providing such information and to his or her duly authorized representative.

(2) Information made confidential by subsection (a) of this section may be disclosed in a judicial or administrative proceeding to collect or ascertain the amount of tax due, but only if: (i) The taxpayer is a party to the proceedings or; (ii) such return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

(c) Reciprocal exchange. -- The Tax Commissioner may permit the proper officer of the United States, or the District of Columbia, or any other state, or his or her authorized representative, to inspect reports, declarations or returns filed
with the Tax Commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the Tax Commissioner or to the Attorney General of this state.

(d) **Penalties.** -- Any officer, member or employee of the State Tax Department, county assessors, county commissions, county sheriffs, municipal financial officers and the board of public works who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(e) **Limitations.** -- Any person protected by the provisions of this article may, in writing, waive the secrecy provision of this section for such purpose and such period as he or she shall therein state, and the officer with whom such waiver is filed, if he or she so determines may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article.

This section shall not be construed to prohibit the publication or release of statistics so classified so as to prevent the identification of particular reports and the items thereof nor to prevent the publication and release of assessments and appraised values of property.

**ARTICLE 10. PROCEDURE AND ADMINISTRATION.**

§11-10-5d. Confidentiality and disclosure of returns and return information.

(a) **General rule.** -- Except when required in an official investigation by the Tax Commissioner into the amount of tax due under any article administered under this article or in
any proceeding in which the Tax Commissioner is a party
before a court of competent jurisdiction to collect or ascertain
the amount of such tax and except as provided in subsections
(d) through (n), inclusive, of this section, it shall be unlawful
for any officer, employee or agent of this state or of any
county, municipality or governmental subdivision to divulge
or make known in any manner the tax return, or any part
thereof, of any person or disclose information concerning the
personal affairs of any individual or the business of any
single firm or corporation, or disclose the amount of income,
or any particulars set forth or disclosed in any report,
declaration or return required to be filed with the Tax
Commissioner by any article of this chapter imposing any tax
administered under this article or by any rule or regulation of
the Tax Commissioner issued thereunder, or disclosed in any
audit or investigation conducted under this article. For
purposes of this article, tax returns and return information
obtained from the Tax Commissioner pursuant to an
exchange of information agreement or otherwise pursuant to
the provisions of subsections (d) through (n), inclusive, of
this section which is in the possession of any officer,
employee, agent or representative of any local or municipal
governmental entity or other governmental subdivision is
subject to the confidentiality and disclosure restrictions set
forth in this article: Provided, That such officers, employees
or agents may disclose the information in an official
investigation, by a local or municipal governmental authority
or agency charged with the duty and responsibility to
administer the tax laws of the jurisdiction, into the amount of
tax due under any lawful local or municipal tax administered
by that authority or agency, or in any proceeding in which the
local or municipal governmental subdivision, authority or
agency is a party before a court of competent jurisdiction to
collect or ascertain the amount of the tax. Unlawful
disclosure of the information by any officer, employee or
agent of any local, municipal or governmental subdivision is subject to the sanctions set forth in this article.

(b) Definitions. -- For purposes of this section:

(1) Background file document. -- The term "background file document", with respect to a written determination, includes the request for that written determination, any written material submitted in support of the request and any communication (written or otherwise) between the State Tax Department and any person outside the State Tax Department in connection with the written determination received before issuance of the written determination.

(2) Disclosure. -- The term "disclosure" means making known to any person in any manner whatsoever a return or return information.

(3) Inspection. -- The terms "inspection" and "inspected" means any examination of a return or return information.

(4) Return. -- The term "return" means any tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to, or part of, the return so filed.

(5) Return information. -- The term "return information" means:
(A) A taxpayer's identity; the nature, source or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to or collected by the Tax Commissioner with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) or by any person under the provisions of this article (or any article of this chapter administered under this article) for any tax, additions to tax, penalty, interest, fine, forfeiture or other imposition or offense; and

(B) Any part of any written determination or any background file document relating to such written determination. "Return information" does not include, however, data in a form which cannot be associated with or otherwise identify, directly or indirectly, a particular taxpayer. Nothing in the preceding sentence, or in any other provision of this code, shall be construed to require the disclosure of standards used or to be used for the selection of returns for examination or data used or to be used for determining such standards.

(6) Tax administration. -- The term "tax administration" means:

(A) The administration, management, conduct, direction and supervision of the execution and application of the tax laws or related statutes of this state and the development and formulation of state and local tax policy relating to existing or proposed state and local tax laws and related statutes of this state; and
(B) Includes assessment, collection, enforcement, litigation, publication and statistical gathering functions under the laws of this state and of local governments.

(7) Taxpayer identity. -- The term "taxpayer identity" means the name of a person with respect to whom a return is filed, his or her mailing address, his or her taxpayer identifying number or a combination thereof.

(8) Taxpayer return information. -- The term "taxpayer return information" means return information as defined in subdivision (5) of this subsection which is filed with, or furnished to, the Tax Commissioner by or on behalf of the taxpayer to whom such return information relates.

(9) Written determination. -- The term "written determination" means a ruling, determination letter, technical advice memorandum or letter or administrative decision issued by the Tax Commissioner.

(c) Criminal penalty. -- Any officer, employee or agent (or former officer, employee or agent) of this state or of any county, municipality or governmental subdivision who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with costs of prosecution.

(d) Disclosure to designee of taxpayer. -- Any person protected by the provisions of this article may, in writing, waive the secrecy provisions of this section for such purpose and such period as he or she shall therein state. The Tax Commissioner may, subject to such requirements and conditions as he or she may prescribe, thereupon release to designated recipients such taxpayer's return or other
(e) Disclosure of returns and return information for use in criminal investigations. -

(1) In general. -- Except as provided in subdivision (3) of this subsection, any return or return information with respect to any specified taxable period or periods shall, pursuant to and upon the grant of an ex parte order by a federal district court judge, federal magistrate or circuit court judge of this state, under subdivision (2) of this subsection, be open (but only to the extent necessary as provided in such order) to inspection by, or disclosure to, officers and employees of any federal agency, or of any agency of this state, who personally and directly engaged in:

(A) Preparation for any judicial or administrative proceeding pertaining to the enforcement of a specifically designated state or federal criminal statute to which this state, the United States or such agency is or may be a party;

(B) Any investigation which may result in such a proceeding; or

(C) Any state or federal grand jury proceeding pertaining to enforcement of such a criminal statute to which this state, the United States or such agency is or may be a party. Such inspection or disclosure shall be solely for the use of such
(2) Application of order. -- Any United States attorney, any special prosecutor appointed under Section 593 of Title 28, United States Code, or any attorney in charge of a United States justice department criminal division organized crime strike force established pursuant to Section 510 of Title 28, United States Code, may authorize an application to a circuit court judge or magistrate, as appropriate, for the order referred to in subdivision (1) of this subsection. Any prosecuting attorney of this state may authorize an application to a circuit court judge of this state for the order referred to in said subdivision. Upon the application, the judge or magistrate may grant such order if he or she determines on the basis of the facts submitted by the applicant that:

(A) There is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(B) There is reasonable cause to believe that the return or return information is or may be relevant to a matter relating to the commission of such act; and

(C) The return or return information is sought exclusively for use in a state or federal criminal investigation or proceeding concerning such act and the information sought to be disclosed cannot reasonably be obtained, under the circumstances, from another source.

(3) The Tax Commissioner may not disclose any return or return information under subdivision (1) of this subsection if he or she determines and certifies to the court that the
disclosure would identify a confidential informant or
seriously impair a civil or criminal tax investigation.

(f) Disclosure to person having a material interest. -- The
tax commissioner may, pursuant to legislative regulations
promulgated by him or her, and upon such terms as he or she
may require, disclose a return or return information to a
person having a material interest therein: Provided, That
such disclosure shall only be made if the tax commissioner
determines, in his or her discretion, that the disclosure would
not seriously impair administration of this state's tax laws.

(g) Statistical use. -- This section shall not be construed
to prohibit the publication or release of statistics so classified
as to prevent the identification of particular returns and the
items thereof.

(h) Disclosure of amount of outstanding lien. -- If notice
of lien has been recorded pursuant to section twelve of this
article, the amount of the outstanding obligation secured by
such lien may be disclosed to any person who furnishes
written evidence satisfactory to the tax commissioner that
such person has a right in the property subject to the lien or
intends to obtain a right in such property.

(i) Reciprocal exchange. -- The tax commissioner may,
pursuant to written agreement, permit the proper officer of
the United States, or the District of Columbia or any other
state, or any political subdivision of this state, or his or her
authorized representative, who is charged by law with
responsibility for administration of a similar tax, to inspect
reports, declarations or returns filed with the tax
commissioner or may furnish to such officer or
representative a copy of any document, provided any other
jurisdiction grants substantially similar privileges to the tax
Commissioner or to the Attorney General of this state: Provided, That pursuant to written agreement the Tax Commissioner may provide to the assessor of any county, sheriff of any county, or the mayor of any West Virginia municipality the federal employer identification number of any business being carried on within the jurisdiction of the requesting assessor, sheriff or mayor. The disclosure shall be only for the purpose of, and only to the extent necessary in, the administration of tax laws: Provided, however, That the information may not be disclosed to the extent that the Tax Commissioner determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

(j) Exchange with municipalities. -- The Tax Commissioner shall, upon the written request of the mayor or governing body of any West Virginia municipality, allow the duly authorized agent of the municipality to inspect and make copies of the state business and occupation tax return filed by taxpayers of the municipality and any other state tax returns (including, but not limited to, consumers sales and services tax return information and health care provider tax return information) as may be reasonably requested by the municipality. Such inspection or copying shall include disclosure to the authorized agent of the municipality for tax administration purposes of all available return information from files of the tax department relating to taxpayers who transact business within the municipality. The Tax Commissioner shall be permitted to inspect or make copies of any tax return and any return information or other information related thereto in the possession of any municipality or its employees, officers, agents or representatives that has been submitted to or filed with the municipality by any person for any tax including, but not limited to, the municipal business and occupation tax, public
utility tax, municipal license tax, tax on purchases of intoxicating liquors, license tax on horse racing or dog racing and municipal amusement tax.

(k) **Release of administrative decisions.** -- The Tax Commissioner shall release to the public his or her administrative decisions, or a summary thereof: *Provided,* that unless the taxpayer appeals the administrative decision to circuit court or waives in writing his or her rights to confidentiality, any identifying characteristics or facts about the taxpayer shall be omitted or modified to an extent so as to not disclose the name or identity of the taxpayer.

(l) **Release of taxpayer information.** -- If the Tax Commissioner believes that enforcement of the tax laws administered under this article will be facilitated and enhanced thereby, he or she shall disclose, upon request, the names and address of persons:

(A) Who have a current business registration certificate.

(B) Who are licensed employment agencies.

(C) Who are licensed collection agencies.

(D) Who are licensed to sell drug paraphernalia.

(E) Who are distributors of gasoline or special fuel.

(F) Who are contractors.

(G) Who are transient vendors.

(H) Who are authorized by law to issue a sales or use tax exemption certificate.
(I) Who are required by law to collect sales or use taxes.

(J) Who are foreign vendors authorized to collect use tax.

(K) Whose business registration certificate has been suspended or canceled or not renewed by the Tax Commissioner.

(L) Against whom a tax lien has been recorded under section twelve of this article (including any particulars stated in the recorded lien).

(M) Against whom criminal warrants have been issued for a criminal violation of this state's tax laws.

(N) Who have been convicted of a criminal violation of this state's tax laws.

(m) Disclosure of return information to child support enforcement division. --

(1) State return information. -- The Tax Commissioner may, upon written request, disclose to the child support enforcement division created by article two, chapter forty-eight-a of this code:

(A) Available return information from the master files of the tax department relating to the Social Security account number, address, filing status, amounts and nature of income and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be enforced; and

(B) Available state return information reflected on any state return filed by, or with respect to, any individual
described in paragraph (A) of this subdivision relating to the amount of the individual's gross income, but only if such information is not reasonably available from any other source.

(2) Restrictions on disclosure. -- The Tax Commissioner shall disclose return information under subdivision (1) of this subsection only for purposes of, and to the extent necessary in, collecting child support obligations from and locating individuals owing such obligations.

(n) Disclosure of names and addresses for purposes of jury selection. -- The Tax Commissioner shall, at the written request of a circuit court or the chief judge thereof, provide to the circuit court within thirty calendar days a list of the names and addresses of individuals residing in the county or counties comprising the circuit who have filed a state personal income tax return for the preceding tax year. The list provided shall set forth names and addresses only. The request shall be limited to counties within the jurisdiction of the requesting court.

The court, upon receiving the list or lists, shall direct the jury commission of the appropriate county to merge the names and addresses with other lists used in compiling a master list of residents of the county from which prospective jurors are to be chosen. Immediately after the master list is compiled, the jury commission shall cause the list provided by the Tax Commissioner and all copies thereof to be destroyed and shall certify to the circuit court and to the Tax Commissioner that the lists have been destroyed.
§11A-2-2. Collection by civil action; fees and costs not required of sheriff.

(a) Taxes are hereby declared to be debts owing by the taxpayer, for which he or she shall be personally liable. After delinquency, the sheriff may enforce this liability by appropriate action in any court of competent jurisdiction. No such action shall be brought after five years from the time the action accrued.

(b) In any such action, the sheriff shall be permitted to prosecute the same without paying fees or costs, and without providing bond or security, as may otherwise be required of civil litigants by the provisions of this code, and shall have all services and process, including the services of witnesses, without paying therefor: Provided, That the sheriff shall maintain for each action for the recovery of delinquent taxes records sufficient to demonstrate the total fees and costs paid and that would have been paid but for the authority provided herein to seek recovery without such payment: Provided, however, That where the sheriff recovers delinquent taxes in or as the result of such action, whether by way of settlement or judgment, such fees and costs as above required to be recorded shall be recoverable from the opposite party and upon receipt of any recovery, the sheriff shall pay from the amount recovered such fees or costs to the officer who otherwise would have been entitled thereto but for the provisions of this section: Provided further, That the fees and costs shall be paid prior to payment to the various taxing units of the balance of the recovered taxes: And provided further, That the payment to the various taxing units shall be prorated on the basis of the total amount of taxes due them.
AN ACT to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating to the State Tax Division in the Department of Revenue; and authorizing the Tax Commissioner to conduct criminal background checks for prospective employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPERVISION.

§11-1-1. Office of Tax Commissioner continued and designated the State Tax Division; appointment, term, oath and bond of commissioner; powers and duties generally; sections of division; assistant tax commissioner; authorization of criminal background checks conducted by Tax Commissioner for prospective employees; assistant attorneys general to assist commissioner.

(a) The Office of the Tax Commissioner is continued in all respects as previously constituted in the state government, but is hereby designated as the State Tax Division of the Department of Revenue.
(b) The Tax Commissioner is the chief executive officer of the State Tax Division and shall be appointed by the Governor, by and with the advice and consent of the Senate, to serve at the will and pleasure of the Governor for the term for which the governor was elected and until a successor has been appointed and has qualified.

(c) The Tax Commissioner, before entering upon the duties of office, shall take the oath or affirmation prescribed by section 5, article IV of the Constitution. The Tax Commissioner shall give bond with good security, to be approved by the Governor, in the penalty of fifteen thousand dollars. The Tax Commissioner shall be repaid his or her actual disbursements for traveling expenses. The Tax Commissioner shall be provided with an office in the capitol and with furniture, office equipment and any necessary clerical assistance.

(d) The Tax Commissioner has control and supervision of the State Tax Division and is responsible for the work of each of its sections or other subunits. Each section or bureau shall be headed by a director appointed by the Tax Commissioner and who is responsible to the Tax Commissioner for the work of his or her section or bureau. The Tax Commissioner may create any sections or bureaus and employ any necessary staff or employees to administer the state tax laws for which the Tax Commissioner or tax division is responsible, within the amount of expenditures appropriated for operation of the tax division by the Legislature. The Tax Commissioner has authority to appoint an assistant Tax Commissioner who shall be his or her principal assistant. The powers and duties vested in the Tax Commissioner by this chapter and any other provisions of law may be delegated by the Tax Commissioner to the assistant or other employees, but the Tax Commissioner is responsible for all official acts of his or her delegates.
(e) In order to assist in determining if an applicant for employment in the State Tax Division is suitable for such employment, the commissioner is authorized to conduct a criminal records check through the criminal identification bureau of the West Virginia State Police and a national criminal history check through the federal bureau of investigation. The result of any criminal records or criminal history check shall be sent to the commissioner. The commissioner and any other employees of the State Tax Division shall not disclose information obtained pursuant to this subsection except for purposes directly related to the employment of the application by the tax division.

(f) The Tax Commissioner, if he or she considers the action necessary, may request the Attorney General to appoint assistant attorneys general who shall perform duties as required by the Tax Commissioner. The Attorney General, in pursuance of the request, may select and appoint assistant attorneys general, with the consent of the Tax Commissioner, to serve during the will and pleasure of the Attorney General, and the assistants shall be paid out of any funds made available for that purpose by the Legislature to the State Tax Division.

CHAPTER 229

(Com. Sub. for S.B 541 - By Senators Plymale and Edgell)

[Passed March 10, 2007; in effect July 1, 2007.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-1C-5b; to amend and reenact §11-8-6f of said code; to amend said code by adding
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thereeto a new section, designated §11-21-23; to amend and reenact §18-9A-2, §18-9A-11 and §18-9A-15 of said code; and to amend said code by adding thereto a new section, designated §18-9A-2a, all relating to public school finance; requiring local share to be calculated assuming properties are being assessed at sixty percent of market value; increasing the limit on revenue generated by the regular school board levy; amending “growth county” definition and clarifying what new property values to include for the purposes of the Growth County School Facilities Act; increasing state aid to counties by reducing the percentage used to calculate levies for general current expense purposes subject to exception; providing for a refundable property tax credit for real property taxes paid in excess of a certain percent of income; requiring that a library funding obligation created by special act be paid from certain funds; limiting a library funding obligation; allowing, under certain conditions, a transfer of the library funding obligation so that the obligation is paid from excess levy revenues; voiding the library funding obligation under certain conditions; and providing extraordinary sustained increased enrollment impact supplement.

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 §11-1C-5b; that §11-8-6f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §11-21-23; that §18-9A-2, §18-9A-11 and §18-9A-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9A-2a, all to read as follows:

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ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-5b. Assessment for purpose of calculating local share.

(a) This section is effective the first day of July, two thousand thirteen.

(b) The Tax Commissioner shall calculate the total assessed values for the purpose of calculating local share for each county each year pursuant to this section and report the total assessed values to the State Board of Education on or before the first day of December of each year.

(c) To provide for assessors to assess at sixty percent of market value, it is the intent of the Legislature that local share, as set forth in section eleven, article nine-a, chapter eighteen of this code, be calculated assuming that the types of property included in the assessment ratio study in each county are assessed at a level in which the assessment ratio study indicates would be sixty percent of market value.

(d) For each of Classes II, III and IV as set forth in section five, article eight of this chapter, all real property of the type that is or would be included in the assessment ratio study if sold is assumed for the purpose of calculating local share to be assessed at the amount the property would be assessed at if all the property in the class were adjusted under the assumption that, using a ratio of sixty percent, all the property were under or over assessed to the same extent as that property included in the assessment ratio study so that using the assessment ratio study as an indicator all the property in the class would be assessed at the ratio of sixty percent of market value: Provided,
That if the sales ratio analysis indicates that assessments are within ten percent of sixty percent of market value, assessments are considered to be sixty percent of market value for the purposes of this section.

(e) The amount of the assumed assessed values determined pursuant to subsection (d) of this section shall be added to the actual assessed values of personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five of this article and the sum of these values is the total assessed value for the purpose of calculating local share.

ARTICLE 8. LEVIES.

§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.

(a) Notwithstanding any other provision of law, where any annual appraisal, triennial appraisal or general valuation of property would produce a statewide aggregate assessment that would cause an increase of two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than one hundred two percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five of this article for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the
resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred two percent: Provided, That the one hundred two percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by one hundred; the resulting number is the Class I regular levy rate, stated as cents-per-one hundred dollars of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.

(c) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by the first day of March of each year on the progress of assessors in each county in assessing properties at the constitutionally required sixty percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.
57 (d) Growth County School Facilities Act. — Legislative findings. —

59 The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state’s students.

74 (1) For the purposes of this subsection, “growth county” means any county that has experienced an increase in second month net enrollment of fifty or more during any three of the last five years, as determined by the State Department of Education.

79 (2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

83 (3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from
application of the regular school board levy rate shall be placed
in a separate account designated as the Growth County School
Facilities Act Fund. Revenues deposited in the Growth County
School Facilities Act Fund shall be appropriated by the county
board of education for construction, maintenance or repair of
school facilities. Revenues in the fund may be carried over for
an indefinite length of time and may be used as matching funds
for the purpose of obtaining funds from the School Building
Authority or for the payment of bonded indebtedness incurred
for school facilities. For any growth county choosing to use the
provisions of this subsection, estimated school board revenues
generated from application of the regular school board levy rate
to new property values are not to be considered as local funds
for purposes of the computation of local share under the
provisions of section eleven, article nine-a, chapter eighteen of
this code.

(e) This section, as amended during the legislative session
in the year two thousand four, shall be effective as to any
regular levy rate imposed for the county boards of education for
taxes due and payable on or after the first day of July, two
thousand four. If any provision of this section is held invalid,
the invalidity shall not affect other provisions or applications of
this section which can be given effect without the invalid
provision or its application and to this end the provisions of this
section are declared to be severable.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-23. Refundable credit for real property taxes paid in excess
of four percent of income.

(a) For the tax years beginning on or after the first day of
January, two thousand eight, any homeowner living in his or her
homestead shall be allowed a refundable credit against the taxes
imposed by this article equal to the amount of real property
taxes paid in excess of four percent of their income. If the
refundable credit provided in this section exceeds the amount of
taxes imposed by this article, the State Department of Revenue
shall refund that amount to the homeowner.
(b) Due to the administrative cost of processing, the refundable credit authorized by this section may not be refunded if less than ten dollars.

(c) The credit for each property tax year shall be claimed by filing a claim for refund within twelve months after the real property taxes are paid on the homestead.

(d) For the purposes of this section:

(1) “Gross household income” is defined as federal adjusted gross income plus the sum of the following:

(A) Modifications in subsection (b), section twelve of this article increasing federal adjusted gross income;

(B) Federal tax-exempt interest reported on federal tax return;

(C) Workers’ compensation and loss of earnings insurance; and

(D) Nontaxable social security benefits; and

(2) For the tax years beginning before the first day January, two thousand eight, “real property taxes paid” means the aggregate of regular levies, excess levies and bond levies extended against the homestead that are paid during the calendar year and determined after any application of any discount for early payment of taxes but before application of any penalty or interest for late payment of property taxes for property tax years that begin on or after the first day of January, two thousand eight.

(e) A homeowner is eligible to benefit from this section or section twenty-one of this article, whichever section provides the most benefit as determined by the homeowner. No homeowner may receive benefits under both this section and section twenty-one of this article during the same taxable year.
39 Nothing in this section denies those entitled to the homestead exemption provided in section three, article six-b of this chapter.

41 (f) No homeowner may receive a refundable tax credit imposed by this article in excess of one thousand dollars. This amount shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

CHAPTER 18. EDUCATION.


For the purpose of this article:

(a) "State board" means the West Virginia Board of Education.

(b) "County board" or "board" means a county board of education.

(c) "Professional salaries" means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) "Professional educator" shall be synonymous with and shall have the same meaning as "teacher" as defined in section one, article one of this chapter.

(e) "Professional instructional personnel" means a professional educator whose regular duty is as that of a classroom teacher, librarian, counselor, attendance director, school psychologist or school nurse with a bachelor’s degree.
and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, counseling, attendance, psychologist or nursing duties.

(f) "Service personnel salaries" means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(g) "Service personnel" means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to adjusted enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: Provided, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(h) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county. Commencing with the school year beginning on the first day of July, one thousand nine hundred eighty-eight, net enrollment further shall include adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(1) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency; and
(2) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student.

(i) "Adjusted enrollment" means the net enrollment plus twice the number of pupils enrolled for special education, including gifted pupils in grades one through eight and exceptional gifted pupils in grades nine through twelve, plus the number of pupils in grades nine through twelve enrolled for honors and advanced placement programs, subject to the following:

(1) No more than four percent of net enrollment of grades one through eight may be counted as enrolled in gifted education and no more than six percent of net enrollment of grades nine through twelve may be counted as enrolled in gifted education, exceptional gifted education (subject to the limitation set forth in section one, article twenty of this chapter) and honors and advanced placement programs for the purpose of determining adjusted enrollment within a county;

(2) Nothing herein shall be construed to limit the number of students who may actually enroll in gifted, exceptional gifted, honors or advanced placement education programs in any county;

(3) No pupil may be counted more than three times for the purpose of determining adjusted enrollment;

(4) The enrollment shall be adjusted to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state.

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(j) "Levies for general current expense purposes" means ninety-four percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, That beginning the first day of July, two thousand eight, "levies for general current expense purposes" means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to the provisions of section six-f, article eight, chapter eleven of this code: Provided, however, That effective the first day of July, two thousand ten, the definitions set forth in this subsection are subject to the provisions of section two-a of this article.

§18-9A-2a. Definition of levies for general current expense purposes.

(a) For the purposes of this section only, “property” means only Classes II, III and IV properties exclusive of natural resources property as defined in section ten, article one-c, chapter eleven of this code, personal property, farmland, managed timberland, public utility property or any other centrally assessed property provided in paragraphs (A), (B), (C) and (D), subdivision (2), subsection (a), section five, article one-c, chapter eleven of this code: Provided, That nothing in this subsection may be construed to require that levies for general current expense purposes be applied only to those properties that are included in this definition.

(b) For the purposes of this section only, the median ratio of the assessed values to actual selling prices in the assessment ratio study applicable to the immediately preceding fiscal year shall be used as the indicator to determine the percentage market value that properties are being assessed at.

(c) Notwithstanding any other provision of this section or section two of this article, effective the first day of July, two thousand ten, for any county that is not assessing property at least at fifty-four percent of market value, “levies for general
"current expense purposes" means ninety-eight percent of the levy rate for county boards of education set by the Legislature pursuant to section six-f, article eight, chapter eleven of this code.

(d) Any county that receives additional state aid due to its using a percentage less than ninety-eight percent in the calculation of levies for general current expense purposes, shall report to the state board how the additional state aid was used. The state board shall compile the reports from all the county boards into a single report, and shall report to the Legislative Oversight Commission on Education Accountability how the county boards used this additional state aid. The report shall be made annually as soon as practical after the end of each fiscal year.


(a) On the basis of each county's certificates of valuation as to all classes of property as determined and published by the assessors pursuant to section six, article three, chapter eleven of this code for the next ensuing fiscal year in reliance upon the assessed values annually developed by each county assessor pursuant to the provisions of articles one-c and three of said chapter, the state board shall for each county compute by application of the levies for general current expense purposes, as defined in section two of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value of each of the several classes of property contained in the report or revised report of the value, made to it by the Tax Commissioner as follows:

(1) The state board shall first take ninety-five percent of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.
(2) The state board shall then apply these rates to the assessed taxable value of other property in each classification in the county as determined by the Tax Commissioner and shall deduct therefrom five percent as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. All of the amount so determined shall be added to the ninety-five percent of public utility taxes computed as provided in subdivision (1) of this subsection and this total shall be further reduced by the amount due each county assessor's office pursuant to the provisions of section eight, article one-c, chapter eleven of this code and this amount shall be the local share of the particular county.

As to any estimations or preliminary computations of local share required prior to the report to the Legislature by the Tax Commissioner, the state shall use the most recent projections or estimations that may be available from the Tax Department for that purpose.

(b) Commencing with the two thousand thirteen fiscal year and each fiscal year thereafter, subsection (a) of this section is void and local share shall be calculated in accordance with the following:

(1) The state board shall for each county compute by application of the levies for general current expense purposes, as defined in sections two and two-a of this article, the amount of revenue which the levies would produce if levied upon one hundred percent of the assessed value calculated pursuant to section five-b, article one-c, chapter eleven of this code;

(2) Five percent shall be deducted from the revenue calculated pursuant to subdivision (1) of this subsection as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like; and

(3) The amount calculated in subdivision (2) of this subsection shall further be reduced by the sum of money due each assessor’s office pursuant to the provisions of section
eight, article one-c, chapter eleven of this code and this reduced amount shall be the local share of the particular county.

(c) Whenever in any year a county assessor or a county commission shall fail or refuse to comply with the provisions of this section in setting the valuations of property for assessment purposes in any class or classes of property in the county, the State Tax Commissioner shall review the valuations for assessment purposes made by the county assessor and the county commission and shall direct the county assessor and the county commission to make corrections in the valuations as necessary so that they shall comply with the requirements of chapter eleven of this code and this section and the Tax Commissioner shall enter the county and fix the assessments at the required ratios. Refusal of the assessor or the county commission to make the corrections constitutes grounds for removal from office.

(d) For the purposes of any computation made in accordance with the provisions of this section, in any taxing unit in which tax increment financing is in effect pursuant to the provisions of article eleven-b, chapter seven of this code, the assessed value of a related private project shall be the base-assessed value as defined in section two of said article.

(e) For purposes of any computation made in accordance with the provisions of this section, in any county where the county board of education has adopted a resolution choosing to use the provisions of the Growth County School Facilities Act set forth in section six-f, article eight, chapter eleven of this code, estimated school board revenues generated from application of the regular school board levy rate to new property values, as that term is designated in said section, may not be considered local share funds and shall be subtracted before the computations in subdivisions (1) and (2), subsection (a) of this section or in subdivisions (2) and (3), subsection (b) of this section as applicable, are made.
(f) The Legislature finds that public school systems throughout the state provide support in varying degrees to public libraries through a variety of means including budgeted allocations, excess levy funds and portions of their regular school board levies as may be provided by special act. A number of public libraries are situated on the campuses of public schools and several are within public school buildings serving both the students and public patrons. To the extent that public schools recognize and choose to avail the resources of public libraries toward developing within their students such legally recognized elements of a thorough and efficient education as literacy, interests in literature, knowledge of government and the world around them and preparation for advanced academic training, work and citizenship, public libraries serve a legitimate school purpose and may do so economically. For the purposes of any computation made in accordance with the provisions of this section, the library funding obligation on the regular school board levies created by a special act shall be paid from that portion of the levies which exceeds the proportion determined to be local share. If the library funding obligation is greater than the amount available in excess of the county’s local share, the obligation created by the special act is reduced to the amount which is available, notwithstanding any provisions of the special act to the contrary.

(g) It is the intent of the Legislature that whenever a provision of subsection (f) of this section is contrary to any special act of the Legislature which has been or may in the future be enacted by the Legislature that creates a library funding obligation on the regular school board levy of a county, subsection (f) of this section controls over the special act. Specifically, the special acts which are subject to said subsection upon the enactment of this section during the two thousand seven regular session of the Legislature include:

(1) Enrolled Senate Bill No. 11, passed on the twelfth day of February, one thousand nine hundred seventy, applicable to the Berkeley County Board of Education;
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(2) Enrolled House Bill No. 1352, passed on the seventh day of April, one thousand nine hundred eighty-one, applicable to the Hardy County Board of Education;

(3) Enrolled Committee Substitute for House Bill No. 2833, passed on the fourteenth day of March, one thousand nine hundred eighty-seven, applicable to the Harrison County Board of Education;

(4) Enrolled House Bill No. 161, passed on the sixth day of March, one thousand nine hundred fifty-seven, applicable to the Kanawha County Board of Education;

(5) Enrolled Senate Bill No. 313, passed on the twelfth day of March, one thousand nine hundred thirty-seven, as amended by Enrolled House Bill No. 1074, passed on the eighth day of March, one thousand nine hundred sixty-seven, and as amended by Enrolled House Bill No. 1195, passed on the eighteenth day of January, one thousand nine hundred eighty-two, applicable to the Ohio County Board of Education;

(6) Enrolled House Bill No. 938, passed on the twenty-eighth day of February, one thousand nine hundred sixty-nine, applicable to the Raleigh County Board of Education;

(7) Enrolled House Bill No. 398, passed on the first day of March, one thousand nine hundred thirty-five, applicable to the Tyler County Board of Education;

(8) Enrolled Committee Substitute for Senate Bill No. 450, passed on the eleventh day of March, one thousand nine hundred ninety-four, applicable to the Upshur County Board of Education; and

(9) Enrolled House Bill No. 2994, passed on the thirteenth day of March, one thousand nine hundred eighty-seven, applicable to the Wood County Board of Education.
(h) Notwithstanding any provision of any special act set forth in subsection (g) of this section to the contrary, the county board of any county with a special act creating a library obligation out of the county’s regular school levy revenues may transfer that library obligation so that it becomes an obligation of its excess levy revenues instead of its regular school levy revenues, subject to the following:

(1) If a county board chooses to transfer the library obligation pursuant to this subsection, the library funding obligation shall remain an obligation of the regular school levy revenues until after the fiscal year in which a vote on an excess levy occurs;

(2) If a county board chooses to transfer the library obligation pursuant to this subsection, the county board shall include the funding of the public library obligation in the same amount as its library funding obligation on its regular levy revenues as the purpose or one of the purposes for the excess levy to be voted on;

(3) If a county board chooses to transfer the library obligation pursuant to this subsection, regardless of whether or not the excess levy passes, effective the fiscal year after the fiscal year in which a vote on the excess levy occurs, a county’s library obligation on its regular levy revenues is void notwithstanding any provision of the special acts set forth in subsection (g) of this section to the contrary; and

(4) Nothing in subdivision (3) of this subsection prohibits a county board from funding its public library obligation voluntarily.

§18-9A-15. Allowance for increased enrollment; extraordinary sustained increased enrollment impact supplement.
(a) To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the General Revenue Fund an amount to be determined as follows:

(1) The state board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code that establishes an objective method for projecting the increase in net enrollment for each school district. The state superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(2) The state superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the state superintendent and proposed by the Governor.

(3) The state superintendent shall calculate each school district’s share of the appropriation by multiplying the projected increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute sixty percent of each school district’s share to the school district on or before the first day of September of each year. The state superintendent shall make a second distribution of the remainder of the appropriation in accordance with subdivision (4) of this subsection.

(4) After the first distribution pursuant to subdivision (3) of this subsection is made and after the actual increase in net enrollment is available, the state superintendent shall compute the total actual amount to be allocated to each school district for the year. The total actual amount to be allocated to each school district for the year is the actual increase in the school district’s net enrollment multiplied by the average total state aid per net pupil.
pupil. The state superintendent shall make the second
distribution to each school district in an amount determined so
that the total amount distributed to the district for the year, in
both the first and second distributions, equals the actual increase
in net enrollment multiplied by the average total state aid per net
pupil. The state superintendent shall make the second
distribution on or before the thirty-first day of December of each
year: Provided, That if the amount distributed to a school
district during the first distribution is greater than the total
amount to which a district is entitled to receive for the year, the
district shall refund the difference to the Department of
Education prior to the thirtieth day of June of the fiscal year in
which the excess distribution is made.

(5) If the amount of the appropriation for increased
enrollment is not sufficient to provide payment in full for the
total of these several allocations, each county allocation shall be
reduced to an amount which is proportionate to the
appropriation compared to the total of the several allocations
and the allocations as thus adjusted shall be distributed to the
counties as provided in this section: Provided, That the
Governor shall request a supplemental appropriation at the next
legislative session for the reduced amount.

(b) To help offset the budgetary impact of extraordinary and
sustained increases in net enrollment in a county, there shall be
included in the basic state aid of any county whose most recent
three-year average growth in second month net enrollment is
two percent or more, an amount equal to one fourth of the state
average per pupil state aid multiplied by the increase in the
county’s second month net enrollment in the latest year.

(c) No provision of this section shall be construed to in any
way affect the allocation of moneys for educational purposes to
a county under other provisions of law.
AN ACT to amend and reenact §11-3-5 of the Code of West Virginia, 1931, as amended, relating to whom assessors may issue proof of payment of personal property taxes.

Be it enacted by the Legislature of West Virginia:

That §11-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5. Correction of previous property books; entry of omitted property.

1 The assessor, in making out the land and personal property books, shall correct any and every mistake he or she discovers in the books for any previous year.

2 When the assessor ascertains that any real or personal property in his or her county liable to taxation, other than that mentioned in the next succeeding paragraph, has been omitted from the land or personal property books for a period of less than five years, he or she shall make an entry of the property in the proper book of the year in which the omission was discovered and assess the same, according to the rule prescribed in section one of this article, and shall charge the same with all taxes chargeable against it at the rate of levy for the year or years the same was omitted, together with interest at the rate of six percent per annum for the years the same
was omitted from the books: Provided, That if the taxpayer, including any person, firm or corporation, and excluding public service corporations, requires proof of payment of personal property taxes then the taxpayer shall file a listing of all personal property owned on the assessment date preceding the tax year or years for which proof must be shown. The assessor shall then create a supplemental assessment for the year or years required for proof of payment for all personal property taxes provided on the listing and present the supplemental assessment to the sheriff who shall apply the levy rate or rates for the year or years so assessed and prepare a tax bill and collect the taxes together with interest thereon at the rate of six percent per annum for the years the same was omitted from the books and any penalties included thereon: Provided, however, That any person who has been a resident of the state less than one year prior to the assessment date is not required to pay any interest or penalty.

And when the assessor ascertains that any notes, bonds, bills and accounts receivable, stocks and other intangible personal property in his or her county liable to taxation has been omitted from the personal property books for a period of five years or less after the thirty-first day of December, one thousand nine hundred thirty-two, he or she shall make entry of the property in the personal property book of the year in which the omission was discovered and assess the same at its true and actual value, according to the rule prescribed in section one of this article, and shall charge the same with all taxes chargeable against it after the year last aforesaid at the rate of levy for the year or years the same was omitted after the year aforesaid, together with interest thereon at the rate of six percent per annum for the years the same was omitted from the books.

Any assessor failing to make an entry as in this section provided, when discovered by him or her or called to his or her attention by any taxpayer interested therein, shall forfeit one hundred dollars.
AN ACT to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to including qualified continuing care retirement communities under the provisions of the Tax Limitations Amendment; and defining “qualified continuing care retirement community” and “qualified resident”.

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. Owner shall also include the corporation or other organization possessed of the freehold of a qualified continuing care retirement community.

(2) “Used and occupied by the owner thereof exclusively for residential purpose” means actual habitation by the owner or the owner’s spouse, or a qualified resident 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 exclusively 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
Except in the case of a qualified continuing care retirement community, 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. In the case of a qualified continuing care retirement community, uses attendant to the functioning of the qualified continuing care retirement community, including, without limitation, cafeteria, laundry, personal and health care services, shall not be considered a commercial use even if such activity or equipment requires a separate license or payment.

(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 consanguinity.

(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.

(6) “Qualified continuing care retirement community” means a continuing care retirement community: (A) Owned by a corporation or other organization exempt from federal
income taxes under the Internal Revenue Code; (B) used in a manner consistent with the purpose of providing housing and health care for residents; and (C) which receives no Medicaid funding under the provisions of article four-b, chapter nine of this code. For purposes of this section, a continuing care retirement community is a licensed facility under the provisions of articles five-c and five-d, chapter sixteen of this code at which independent living, assisted living and nursing care, if necessary, are provided to qualified residents.

“Qualified resident” means a person who contracts with a qualified continuing care retirement community to reside therein, in exchange for the payment of an entrance fee or deposit, or payment of periodic charges, or both.

(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. Effective date of amendments -- Amendments to this section enacted during the regular session of the Legislature in the year two thousand seven shall take effect on the first day of July, two thousand seven.
AN ACT to amend and reenact §11-6A-5a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13-2o of said code; and to amend said code by adding thereto a new section, designated §11-13-2p, all relating generally to tax treatment of wind power projects; imposing limitation on salvage valuation of facilities at a wind power project; increasing taxable generating capacity of wind power-generating unit for business and occupation tax purposes; and providing credit against additional business and occupation tax liability for certain contractually agreed contributions to specified counties, county school boards or municipalities.

Be it enacted by the Legislature of West Virginia:

That §11-6A-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-13-2o of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-13-2p, all to read as follows:

Article
6A. Pollution Control Facilities Tax Treatment.
§11-6A-5a. Wind power projects.

(a) Notwithstanding any other provisions of this article, a power project designed, constructed or installed to convert wind into electrical energy shall be subject to the provisions of this section.

(b) Each wind turbine installed at a wind power project and each tower upon which the turbine is affixed shall be considered to be personal property that is a pollution control facility for purposes of this article and, subject to an allocation of the value of project property determined by the Tax Commissioner in accordance with this section, all of the value associated with the wind turbine and tower shall be accorded salvage valuation: Provided, That the portion of the total value of the facility assigned salvage value in accordance with this section shall, on and after the first day of July, two thousand seven, be no greater than seventy-nine percent of the total value of the facility. All personal property at a wind power project other than a wind turbine and tower shall not be accorded salvage valuation and shall not be considered to be personal property that is a pollution control facility. For purposes of this section, “wind turbine and tower” is limited to: The rotor, consisting of the blades and the supporting hub; the drive train, which includes the remaining rotating parts such as the shafts, gearbox, coupling, a mechanical brake and the generator; the nacelle and main frame, including the wind turbine housing, bedplate...
and the yaw system; the turbine transformer; the machine controls; the tower; and the tower foundation.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-20. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

§11-13-2p. Credit against tax based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

§11-13-2o. Business of generating or producing or selling electricity on and after the first day of June, one thousand nine hundred ninety-five; definitions; rate of tax; exemptions; effective date.

(a) Definitions. -- As used in this section:

(1) "Average four-year generation" is computed by dividing by four the sum of a generating unit's net generation, expressed in kilowatt hours, for calendar years one thousand nine hundred ninety-one, one thousand nine hundred ninety-two, one thousand nine hundred ninety-three and one thousand nine hundred ninety-four. For any generating unit which was newly installed and placed into commercial operation after the first day of January, one thousand nine hundred ninety-one, and prior to the effective date of this section, "average four-year generation" is computed by dividing the unit's net generation for the period beginning with the month in which the unit was placed into commercial operation and ending with the month preceding the effective date of this section by the number of months in the period and multiplying the resulting amount by twelve with the
result being a representative twelve-month average of the unit's net generation while in an operational status.

(2) "Capacity factor" means a fraction, the numerator of which is average four-year generation and the denominator of which is the maximum possible annual generation.

(3) "Generating unit" means a mechanical apparatus or structure which through the operation of its component parts is capable of generating or producing electricity and is regularly used for this purpose.

(4) "Inactive reserve" means the removal of a generating unit from commercial service for a period of not less than twelve consecutive months as a result of lack of need for generation from the generating unit or as a result of the requirements of state or federal law or the removal of a generating unit from commercial service for any period as a result of any physical exigency which is beyond the reasonable control of the taxpayer.

(5) "Maximum possible annual generation" means the product, expressed in kilowatt hours, of official capability times eight thousand seven hundred sixty hours.

(6) "Official capability" means the nameplate capacity rating of a generating unit expressed in kilowatts.

(7) "Peaking unit" means a generating unit designed for the limited purpose of meeting peak demands for electricity or filling emergency electricity requirements.
(8) "Retired from service" means the removal of a generating unit from commercial service for a period of at least twelve consecutive months with the intent that the unit will not thereafter be returned to active service.

(9) "Taxable generating capacity" means the product, expressed in kilowatts, of the capacity factor times the official capability of a generating unit, subject to the modifications set forth in subdivisions (2) and (3), subsection (c) of this section.

(10) "Net generation" for a period means the kilowatt hours of net generation available for sale generated or produced by the generating unit in this state during the period less the following:

(A) Twenty-one twenty-sixths of the kilowatt hours of electricity generated at the generating unit and sold during the period to a plant location of a customer engaged in manufacturing activity if the contract demand at the plant location exceeds two hundred thousand kilowatts per hour in a year or where the usage at the plant location exceeds two hundred thousand kilowatts per hour in a year;

(B) Twenty-one twenty-sixths of the kilowatt hours of electricity produced or generated at the generating unit during the period by any person producing electric power and an alternative form of energy at a facility located in this state substantially from gob or other mine refuse;
(C) The total kilowatt hours of electricity generated at the generating unit exempted from tax during the period by subsection (b), section two-n of this article.

(b) Rate of tax. -- Upon every person engaging or continuing within this state in the business of generating or producing electricity for sale, profit or commercial use, either directly or indirectly through the activity of others, in whole or in part, or in the business of selling electricity to consumers, or in both businesses, the tax imposed by section two of this article shall be equal to:

(1) For taxpayers who generate or produce electricity for sale, profit or commercial use, the product of twenty-two dollars and seventy-eight cents multiplied by the taxable generating capacity of each generating unit in this state owned or leased by the taxpayer, subject to the modifications set forth in subsection (c) of this section: Provided, That with respect to each generating unit in this state which has installed a flue gas desulfurization system, the tax imposed by section two of this article shall, on and after the thirty-first day of January, one thousand nine hundred ninety-six, be equal to the product of twenty dollars and seventy cents multiplied by the taxable generating capacity of the units, subject to the modifications set forth in subsection (c) of this section: Provided, however, That with respect to kilowatt hours sold to or used by a plant location engaged in manufacturing activity in which the contract demand at the plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at the plant location exceeds two hundred thousand kilowatts per hour in a year, in no event shall the tax imposed by this article with respect to the sale or
(2) For taxpayers who sell electricity to consumers in this state that is not generated or produced in this state by the taxpayer, nineteen hundredths of one cent times the kilowatt hours of electricity sold to consumers in this state that were not generated or produced in this state by the taxpayer, except that the rate shall be five hundredths of one cent times the kilowatt hours of electricity not generated or produced in this state by the taxpayer which is sold to a plant location in this state of a customer engaged in manufacturing activity if the contract demand at such plant location exceeds two hundred thousand kilowatts per hour per year or if the usage at such plant location exceeds two hundred thousand kilowatts per hour in a year. The measure of tax under this subdivision shall be equal to the total kilowatt hours of electricity sold to consumers in the state during the taxable year, that were not generated or produced in this state by the taxpayer, to be determined by subtracting from the total kilowatt hours of electricity sold to consumers in the state the net kilowatt hours of electricity generated or produced in the state by the taxpayer during the taxable year. For the purposes of this subdivision, net kilowatt hours of electricity generated or produced in this state by the taxpayer includes the taxpayer's pro rata share of electricity generated or produced in this state by a partnership or limited liability company of which the taxpayer is a partner or member. The provisions of this subdivision shall not apply to those kilowatt hours exempt under subsection (b), section two-n of
this article. Any person taxable under this subdivision shall be allowed a credit against the amount of tax due under this subdivision for any electric power generation taxes or a tax similar to the tax imposed by subdivision (1) of this subsection paid by the taxpayer with respect to the electric power to the state in which the power was generated or produced. The amount of credit allowed may not exceed the tax liability arising under this subdivision with respect to the sale of the power.

(c) The following provisions are applicable to taxpayers subject to tax under subdivision (1), subsection (b) of this section:

(1) Retired units; inactive reserve. -- If a generating unit is retired from service or placed in inactive reserve, a taxpayer may not be liable for tax computed with respect to the taxable generating capacity of the unit for the period that the unit is inactive or retired. The taxpayer shall provide written notice to the Joint Committee on Government and Finance, as well as to any other entity as may be otherwise provided by law, eighteen months prior to retiring any generating unit from service in this state.

(2) New generating units. -- If a new generating unit, other than a peaking unit, is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal forty percent of the official capability of the unit: Provided, That the taxable generating capacity of a county or municipally owned generating unit shall equal zero percent of the official
capability of the unit and for taxable periods ending on or before the thirty-first day of December, two thousand seven, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal five percent of the official capability of the unit: Provided further, That for taxable periods beginning on or after the first day of January, two thousand eight, the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind shall equal twelve percent of the official capability of the unit.

(3) Peaking units. -- If a peaking unit is placed in initial service on or after the effective date of this section, the generating unit's taxable generating capacity shall equal five percent of the official capability of the unit: Provided, That the taxable generating capacity of a county- or municipally owned generating plant shall equal zero percent of the official capability of the unit.

(4) Transfers of interests in generating units. -- If a taxpayer acquires an interest in a generating unit, the taxpayer shall include the computation of taxable generating capacity of the unit in the determination of the taxpayer's tax liability as of the date of the acquisition. Conversely, if a taxpayer transfers an interest in a generating unit, the taxpayer may not for periods thereafter be liable for tax computed with respect to the taxable generating capacity of the transferred unit.

(5) Proration, allocation. -- The Tax Commissioner shall promulgate rules in conformity with the provisions of article
three, chapter twenty-nine-a of this code to provide for the
administration of this section and to equitably prorate taxes
for a taxable year in which a generating unit is first placed in
service, retired or placed in inactive reserve, or in which a
taxpayer acquires or transfers an interest in a generating unit,
to equitably allocate and reallocate adjustments to net
generation, and to equitably allocate taxes among multiple
taxpayers with interests in a single generating unit, it being
the intent of the Legislature to prohibit multiple taxation of
the same taxable generating capacity.

So as to provide for an orderly transition with respect to
the rate-making effect of this section, those electric light and
power companies which, as of the effective date of this
section, are permitted by the West Virginia Public Service
Commission to utilize deferred accounting for purposes of
recovery from ratepayers of any portion of business and
occupation tax expense under this article shall be permitted,
until the time that action pursuant to a rate application or
order of the commission provides for appropriate alternative
rate-making treatment for such expense, to recover the tax
expense imposed by this section by means of deferred
accounting to the extent that the tax expense imposed by this
section exceeds the level of business and occupation tax
under this article currently allowed in rates.

(6) Electricity generated by manufacturer or affiliate for
use in manufacturing activity. -- When electricity used in a
manufacturing activity is generated in this state by the person
who owns the manufacturing facility in which the electricity
is used and the electricity-generating unit or units producing
the electricity so used are owned by the manufacturer, or by a member of the manufacturer's controlled group, as defined in Section 267 of the Internal Revenue Code of 1986, as amended, the generation of the electricity may not be taxable under this article: Provided, That any electricity generated or produced at the generating unit or units which is sold or used for purposes other than in the manufacturing activity shall be taxed under this section and the amount of tax payable shall be adjusted to be equal to an amount which is proportional to the electricity sold for purposes other than the manufacturing activity. The Department of Revenue shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code: Provided, however, That the rules shall be promulgated as emergency rules.

(d) Beginning the first day of June, one thousand nine hundred ninety-five, electric light and power companies that actually paid tax based on the provisions of subdivision (3), subsection (a), section two-d of this article or section two-m of this article for every taxable month in one thousand nine hundred ninety-four shall determine their liability for payment of tax under this article in accordance with subdivisions (1) and (2) of this subsection. All other electric light and power companies shall determine their liability for payment of tax under this article exclusively under this section beginning the first day of June, one thousand nine hundred ninety-five, and thereafter.

(1) If for taxable months beginning on or after the first day of June, one thousand nine hundred ninety-five, liability for tax under this section is equal to or greater than the sum
241 of the power company's liability for payment of tax under
242 subdivision (3), subsection (a), section two-d of this article
243 and this section, then the company shall pay the tax due
244 under this section and not the tax due under subdivision (3),
245 subsection (a), section two-d of this article and section two-m
246 of this article. If tax liability under this section is less than the
247 tax shall be paid under subdivision (3), subsection (a), section
248 two-d of this article and section two-m of this article and the
249 tax due under this section may not be paid.

250 Notwithstanding subdivision (1) of this subsection,
251 for taxable years beginning on or after the first day of
252 January, one thousand nine hundred ninety-eight, all electric
253 and light power companies shall determine their liability for
254 payment of tax under this article exclusively under this
255 section.

§11-13-2p. Credit against tax based on the taxable generating
capacity of a generating unit utilizing a turbine
powered primarily by wind.

1 (a) For taxable periods beginning on or after the first day
2 of January, two thousand eight, a credit shall be allowed
3 against tax imposed by this article and calculated based on
4 the taxable generating capacity of a generating unit utilizing
5 a turbine powered primarily by wind. The total credit shall be
6 equal to the amount of qualified contractually agreed
7 contributions as defined in this section. The amount of total
8 credit shall be reduced each year by the amount of credit
9 annually applied to reduce tax under this section.
(b) Definitions. -- For purposes of this section:

(1) "Qualified contractually agreed contribution" means money paid, or the lower of the cost or fair market value, at the time of transfer, of property transferred, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or to a municipality located in the county in which the wind turbine unit is located pursuant to a written transfer agreement.

(A) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of this state or of any county or municipality.

(B) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to any county, county school board or municipality or to any other governmental subdivision, agency or instrumentality of any state other than this state or of any county or municipality of any state other than this state.

(C) The term "qualified contractually agreed contribution" does not include any payment in lieu of taxes or any tax, fee or levy paid to the United States or to any governmental subdivision of the United States or to any government subdivision of any state other than this state.
agency or instrumentality of the United States or to any foreign government or subdivision, agency or instrumentality thereof.

(2) "Taxpayer" means any person that is legally liable for tax imposed by this article that is calculated based on the taxable generating capacity of a generating unit utilizing a turbine powered primarily by wind.

(3) "Wind turbine unit" means, and is limited to, an electricity-generating unit utilizing a turbine powered primarily by wind that has a taxable generating capacity determined in accordance with subdivision (2), subsection (c), section two-o of this article.

(4) "Written transfer agreement" means a written contract or written promise to transfer money or property to a county in which the wind turbine unit is located, a county school board of the county in which the wind turbine unit is located or a municipality located in the county in which the wind turbine unit is located, executed not later than the first day of March, two thousand seven, by the taxpayer, the owner of the taxpayer or the operator or owner of the wind turbine unit and executed by the county commission of the county in which the wind turbine unit is located or by any officer or representative of the county commission having authority to execute binding legal documents for the county commission, the county school board of the county in which the wind turbine unit is located or any officer or representative of the county school board having authority to execute binding legal documents for the county school board, or the city council,
mayor or city manager of a municipality located in the county in which the wind turbine unit is located or any officer or representative of the municipality having authority to execute binding legal documents for the municipality.

(c) *Credit limitations.* --

(1) The total amount of credit allowable under this section is limited to the amount of qualified contractually agreed contributions made pursuant to a written transfer agreement.

(2) The credit allowed under this section may only be applied to offset annual tax imposed by this article that is measured by the taxable generating capacity of the wind turbine unit. No other tax imposed by or under this article may be offset by the credit allowed under this section and no other tax imposed by this code may be offset by the credit.

(3) The credit allowed under this section shall be applied after application of the credit allowed under article thirteen-d of this chapter, as applicable, and after any other applicable credits allowed by this chapter against tax imposed by this article.

(4) The amount of credit allowed under this section and the amount of the credit allowed under article thirteen-d of this chapter may not, in combination, reduce the amount of annual tax imposed by this article on the taxable generating capacity of the wind turbine unit to an amount that is less than fifty percent of the amount of annual tax that would
have been imposed by this article on the wind turbine unit if the taxable generating capacity of the wind turbine unit was set at five percent of the official capacity of the wind turbine unit.

(d) Time over which credit may be applied. --

(1) The total amount of credit determined under subsection (a) of this section shall be reduced annually by the amount of credit applied in each tax year to offset tax under this section.

(2) The credit allowed under this section may be applied annually, beginning on the later of:

(A) The year a qualified contractually agreed contribution in money was paid or a qualified contractually agreed contribution in property was delivered to the county, the county school board or the municipality; or

(B) The year in which title thereto irrevocably passed to the transferee;

(3) The credit may thereafter be taken in each succeeding tax year until the amount of total credit has been exhausted or until the ninth succeeding tax year after the contractually agreed contribution of money was so paid or the contractually agreed contribution of property was so delivered. Credit remaining after the ninth succeeding tax year is forfeited.
(4) Credit to which a taxpayer is entitled under this section shall be applied in an order and sequence such that the credit earned earliest in time shall be applied first in any tax year to offset tax under this section.

(e) **Credit for successor businesses and transferees of a wind turbine unit; apportionment.** --

(1) **Mere change in form of business.** -- The credit allowed under this section shall not be forfeited by reason of a mere change in the form of the entity or organization that is conducting the business so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Such successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.

(2) **Transfer or sale to successor.** -- The credit allowed under this section shall not be forfeited by reason of a transfer or sale to a successor business of a wind turbine unit so long as the successor business continues to remain a taxpayer, as defined in this section, in this state, operating the wind turbine unit that was originally owned or operated by the predecessor taxpayer. Upon transfer or sale of a wind turbine unit, the successor shall acquire the amount of credit that remains available under this section for each subsequent taxable year until the credit expires or is exhausted, based on the years remaining and amount of credit remaining to which the transferor was entitled at the time of the transfer.
Apportionment in the year of transfer. — Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this section for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred and, for the year of transfer, an amount of annual credit for the year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in the transferor's taxable year.
Be it enacted by the Legislature of West Virginia:

That §11-6C-1, §11-6C-2, §11-6C-3, §11-6C-4 and §11-6C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6C. SPECIAL METHOD FOR APPRAISING DEALER VEHICLE INVENTORY, DEALER MOTORBOAT INVENTORY, DAILY PASSENGER RENTAL CAR INVENTORY, AND HOUSE TRAILER AND FACTORY-BUILT HOMES INVENTORY.

§11-6C-1. Inventory included within scope of article.

§11-6C-2. Method for determining market value of dealer vehicle inventory, dealer motorboat inventory, daily passenger rental car inventory and house trailer and factory-built homes inventory.

§11-6C-3. Owner to file return estimating market value.

§11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, or house trailer and factory-built homes inventory.

§11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

§11-6C-1. Inventory included within scope of article.

1 Notwithstanding any other provisions of law, inventory of vehicles, as that term is defined in section one, article one, chapter seventeen-b of this code that is held for sale or lease by new or used vehicle dealers licensed under the provisions of article six, chapter seventeen-a of this code, or held for sale or lease by daily passenger car rental businesses licensed under the provisions of article six-d of said chapter and inventory of motorboats, as that term is defined in section one, article six of said chapter, that is held for sale or lease by a recreational vehicle dealer, as that term is defined in said
section, that is licensed under the authority of section three, article six of said chapter, consisting of individual units of personal new or used property, each unit of which, upon its sale to a retail purchaser, must, as a matter of law, be titled in the name of the retail purchaser and registered with the Division of Motor Vehicles, shall be appraised for assessment purposes, as set forth in this article: Provided, That house trailers and factory-built homes shall be included within the scope of this article.

This article does not apply to units of inventory which are included in fleet sales, transactions between dealers or classified as heavy duty trucks of sixteen thousand pounds or more gross vehicular weight. For purposes of this article, inventory subject to the provisions of this article shall be denoted "dealer vehicle inventory", "dealer motorboat inventory", "daily passenger rental car inventory" and "house trailer and factory-built homes inventory".

§11-6C-2. Method for determining market value of dealer vehicle inventory, dealer motorboat inventory, daily passenger rental car inventory and house trailer and factory-built homes inventory.

(a) For purposes of appraisal, the market value of dealer vehicle inventory and dealer motorboat inventory, as of the first day of July of each year, shall be the gross sales or total annual sales of such inventory made by such dealer during the preceding calendar year, divided by twelve, for a dealer with respect to which or whom sales were made during the
entire preceding year. For the purposes of this article, "gross sales" or "total annual sales" means the amount received in money, credits, property, services or other consideration from sales within this state without deduction on account of the cost of the property sold, amounts paid for interest or any other expenses whatsoever. Gross sales or total annual sales shall not be reduced by the value of an item of tangible personal property which is traded in for the purpose of reducing the purchase price of the item purchased. In the case of dealers who were not in business during the entire calendar year immediately preceding the first day of July of that calendar year, the assessor shall estimate the market value of such inventory based on such data as may be available to him or her: Provided, That the assessor may extrapolate estimates using such sales data as may be available and reliable when sales are made for a period of three months or more during the prior year: Provided, however, That there shall be excluded from the appraisal calculations the value of those units which were not physically held as inventory by the owner of the inventory at any time during the preceding year. In all cases, the market value, so derived, shall serve as the basis for calculating the appraised value.

(b) For purposes of appraisal, the market value of daily passenger rental car inventory, as of the first day of July of each year, shall be the gross value of all daily passenger rental cars made available by a daily passenger rental car business on the first day of each month of the immediately preceding calendar year: Provided, That the daily passenger rental car business shall add together the gross values and divide that sum by twelve. For purposes of this article,
"gross value" means the lowest value for each vehicle as shown in a nationally accepted used car guide determined by the Tax Commissioner. To calculate the "gross value" of any vehicle that does not appear in a nationally accepted used car guide, the Tax Commissioner shall determine the percent of the manufacturer's suggested retail price for each such vehicle held as a daily passenger rental car without deduction on account of the cost of any inventory, amounts paid for interest or any other expenses whatsoever. In the case of daily passenger rental car businesses that were not in business during the entire calendar year immediately preceding the first day of July of that calendar year, the assessor shall estimate the market value of such daily passenger rental car inventory based on such data as may be available to him or her: Provided, however, That the assessor may extrapolate estimates using the daily passenger rental car data that is made available and reliable when rentals were made for a period of three months or more during the prior year: Provided further, That there shall be excluded from the appraisal calculations the value of those units which were not physically held as daily passenger rental car inventory by the owner of the daily passenger rental car inventory at any time during the preceding year. In all cases, the gross value of daily passenger rental car inventory, so derived, shall serve as the basis for calculating the appraised value of the inventory. For purposes of this article, "daily passenger rental car inventory" includes all motor vehicles licensed as a class A motor vehicle as defined in section one, article ten, chapter seventeen-a of this code.

(c) For purposes of appraisal, the market value of house trailer and factory-built homes inventory, as of the first day of July of each year, shall be the gross sales or total annual sales of such inventory made by such dealer during the
preceding calendar year, divided by twelve, for a dealer with respect to which or whom sales were made during the entire preceding year. For the purposes of this article, "gross sales" or "total annual sales" means the amount received in money, credits, property, services or other consideration from sales within this state without deduction on account of the cost of the property sold, amounts paid for interest or any other expenses whatsoever. Gross sales or total annual sales shall not be reduced by the value of an item of tangible personal property which is traded in for the purpose of reducing the purchase price of the item purchased. In the case of dealers who were not in business during the entire calendar year immediately preceding the first day of July of that calendar year, the assessor shall estimate the market value of such inventory based on such data as may be available to him or her: Provided, That the assessor may extrapolate estimates using such sales data as may be available and reliable when sales are made for a period of three months or more during the prior year: Provided, however, That there shall be excluded from the appraisal calculations the value of those units which were not physically held as inventory by the owner of the inventory at any time during the preceding year. In all cases, the market value, so derived, shall serve as the basis for calculating the appraised value.

§11-6C-3. Owner to file return estimating market value.

The owner of dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, or house trailer and factory-built homes inventory shall report the market value of such inventory, derived as set forth in section two of this article, to the assessor, as a part of the return required by law to be filed annually pursuant to the provisions of this chapter.
§11-6C-4. Determination of tax on dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory, or house trailer and factory-built homes inventory.

The annual amount of tax levied upon the dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory or house trailer and factory-built homes inventory pursuant to article eight of this chapter shall be based upon the market value as determined pursuant to this article, times the assessment percentage then provided by law.

§11-6C-5. Intent of this article; Tax Commissioner to promulgate rules.

(a) This article is adopted to address the lack of uniformity, audit difficulties and business management issues arising in this state with respect to the assessment of the personal property held as new and used dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory or house trailer and factory-built homes inventory. Accordingly, the Legislature finds and declares that the adoption of this article will provide a more reliable and uniform method of determining market value of dealer vehicle inventory, daily passenger rental car inventory, dealer motorboat inventory or house trailer and factory-built homes inventory; minimize audit problems associated with such property; provide a predictable revenue stream for levying bodies; maximize the owner's ability to manage inventory; and provide clear guidance to local authorities by superseding the wide variety of otherwise lawful appraisal methods now in use in this state.

(b) The Tax Commissioner shall have the power to promulgate such rules as may be necessary to implement the provisions of this article.
AN ACT to amend and reenact §11-10-4 of the Code of West Virginia, 1931, as amended, relating to administration of taxes, and enacting certain definitions.

Be it enacted by the Legislature of West Virginia:

That §11-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-4. Definitions.

1 For the purpose of this article, the term:

2 (a) "Officer or employee of this state" shall include, but is not limited to, any former officer or employee of the State of West Virginia.

5 (b) "Office of tax appeals" means the West Virginia office of tax appeals created by section three, article ten-a of this chapter.

8 (c) "Person" shall include, but is not limited to, any individual, firm, partnership, limited partnership,
copartnership, joint venture, association, corporation, municipal corporation, organization, receiver, estate, trust, guardian, executor, administrator, 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 and the provisions of any of the other articles of this chapter which impose taxes administered by the tax commissioner, unless the intention to give a more limited or broader meaning is disclosed by the context of this article or any of the other articles of this chapter which impose taxes administered by the tax commissioner.

(d) "Return" means for taxable years beginning on or after the first day of January, two thousand seven, a tax or information return or report, declaration of estimated tax, claim or petition for refund or credit or petition for reassessment which is complete and that is required by, or provided for, or permitted under the provisions of this article (or any article of this chapter administered under this article) which is filed with the tax commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments or lists which are supplemental to the return so filed. For purposes of this subsection, “complete” means for taxable years beginning on or after the first day of January, two thousand seven, the information required to be entered is entered on the applicable return forms. A return form is not to be considered complete if the information required to be entered on the applicable return forms is only contained in amendments or supplements thereto, including supporting schedules, attachments or lists. A return that is not considered complete is deemed not to be filed:

(1) For purposes of claiming a refund of any tax administered under this article;
(2) For purposes of the commencement of any limitation on any assessment under section fifteen of this article;

(3) For purposes of determining the commencement of the period when the tax commissioner shall pay interest for the late payment of a refund;

(4) For purposes of additions to tax imposed under sections eighteen, eighteen-a or eighteen-b of this article; or

(5) For purposes of penalties imposed under section nineteen of this article.

(e) "State" means any state of the United States or the District of Columbia.

(f) "Tax" or "taxes" includes within the meaning thereof taxes specified in section three of this article, additions to tax, penalties and interest, unless the intention to give the same a more limited meaning is disclosed by the context.

(g) "Tax commissioner" or "commissioner" means the tax commissioner of the state of West Virginia or his or her delegate.

(h) "Taxpayer" means any person required to file a return for any tax administered under this article, or any person liable for the payment of any tax administered under this article.

(i) "Tax administered under this article" means any tax to which this article applies as set forth in section three of this article.

(j) "This code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

(k) "This state" means the State of West Virginia.
AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended, relating to the administration of taxes; and providing technical corrections to assure the proper collection of offset fees.

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. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.


1 (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.
73 (2) The successor in business of any person who sells out
74 his, her or its business or stock of goods, or ceases doing
75 business, is personally liable for the payments of tax,
76 additions to tax, penalties and interest unpaid after expiration
77 of the thirty-day period allowed for payment: Provided, That
78 if the business is purchased in an arms-length transaction, and
79 if the purchaser withholds so much of the consideration for
80 the purchase as will satisfy any tax, additions to tax, penalties
81 and interest which may be due until the seller produces a
82 receipt from the Tax Commissioner evidencing the payment
83 thereof, the purchaser is not personally liable for any taxes
84 attributable to the former owner of the business unless the
85 contract of sale provides for the purchaser to be liable for
86 some or all of the taxes. The amount of tax, additions to tax,
87 penalties and interest for which the successor is liable is a
88 lien on the property of the successor, which shall be enforced
89 by the Tax Commissioner as provided in this article.

90 (g) Priority in distribution of estate or property in
91 receivership; personal liability of fiduciary. -- All taxes due
92 and unpaid under this article shall be paid from the first
93 money available for distribution, voluntary or compulsory, in
94 receivership, bankruptcy or otherwise, of the estate of any
95 person, firm or corporation, in priority to all claims, except
96 taxes and debts due the United States which under federal
97 law are given priority over the debts and liens created by this
98 article. Any trustee, receiver, administrator, executor or
99 person charged with the administration of an estate who
100 violates the provisions of this section is personally liable for
101 any taxes accrued and unpaid under this article, which are
102 chargeable against the person, firm or corporation whose
103 estate is in administration.

104 (h) Injunction. -- If the taxpayer fails for a period of more
105 than sixty days to fully comply with any of the provisions of
106 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 subdivision. 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, however, 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: \textit{Provided further}, That the amount of the offset fee
imposed by the Tax Commissioner shall be deducted from
the moneys retained from the taxpayer's state 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: \textit{And 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) \textit{Spouse relieved of liability in certain cases.} --

(1) \textit{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 twenty thousand dollars 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 "reabjustment 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 236

(S.B. 588 - By Senators Fanning, Bailey, McKenzie and Kessler)

[Passed March 8, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-13-2f of the Code of West Virginia, 1931, as amended, relating to the taxation of synthetic fuel; removing the expiration date of the tax on manufacturing or production of synthetic fuel from coal which is scheduled to expire on the thirtieth day of June, two thousand seven; and amending the definition of synthetic fuel-producing county.

Be it enacted by the Legislature of West Virginia:

That §11-13-2f of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.
§11-13-2f. Manufacturing or producing synthetic fuel from coal; rate and measure of tax; definitions; dedication, deposit and distribution of tax; expenditure of distributions received by synthetic fuel-producing counties for economic development and infrastructure improvement pursuant to plan approved by West Virginia Development Office; priority for expenditure of distributions received by other county commissions; date for expiration of tax.

(a) Rate and measure of tax. — There is hereby imposed an annual tax, in accordance with section two of this article, upon every person engaging or continuing within this state in the business of manufacturing or producing synthetic fuel from coal for sale, profit or commercial use, either directly or through the activity of others, in whole or in part, and the amount of the tax shall be equal to fifty cents per ton of synthetic fuel manufactured or produced for sale, profit or commercial use during the taxable year. When a fraction of a ton is included in the measure of tax, the rate of tax as to that fraction of a ton shall be proportional. The measure of tax is the total number of tons of synthetic fuel product manufactured or produced in this state during the taxable year for sale, profit or commercial use regardless of the place of sale or the fact that deliveries may be made to points outside this state. Liability for payment of this tax shall accrue when the synthetic fuel product is sold by the manufacturer or producer, determined by when the producer or manufacturer recognizes gross receipts for federal income tax purposes. When there is no sale of the synthetic fuel product, liability for tax shall accrue when the synthetic fuel product is shipped from the manufacturing facility for commercial use, whether by the taxpayer or by a related party, except as otherwise provided in legislative rules promulgated by the Tax
(b) **Definitions.** -- For purposes of this section:

1. “Fiscal year” means the fiscal year of this state.

2. "Fuel" means material that produces usable heat or power upon combustion.

3. "Fuel manufactured or produced from coal" means liquid, gaseous or solid fuels produced from coal, including, but not limited to, such fuels when used as feedstocks.

4. “Office of chief inspector” means the state Auditor as ex officio chief inspector and supervisor of local government offices in accordance with section eleven, article nine, chapter six of this code.

5. “Provisional share” means the portion of the Synthetic Fuel-Producing Counties Grant Fund that is available for possible distribution to each synthetic fuel-producing county. The amount of each county’s provisional share is derived by dividing the share computation base by the number of synthetic fuel-producing counties in this state during the fiscal year. The share computation base is the sum of: (A) Net revenues deposited in the synthetic fuel-producing counties grant fund for the fiscal year; and (B) any amounts repooled for the fiscal year into the synthetic fuel-producing counties grant fund under this section; less (C) the amount dedicated and allotted to the director of the Development Office under this section for administration of the synthetic fuel-producing counties grant program. A county shall be counted as a synthetic fuel-producing county only if a synthetic fuel-manufacturing plant
actively produced synthetic fuel in the county during the fiscal year.

(6) "Synthetic fuel manufactured or produced from coal" or "synthetic fuel" means and includes, but is not limited to, any fuel that is made or formed into a briquette, fragment, sheet, flake or other solid form by combining a binder or binding substance with coal dust, coal fines, crushed coal, pulverized coal, stoker fines, waste coal, coal or material derived from slurry ponds, coal or material derived from gob piles or any combination of the aforementioned materials without regard to whether any federal tax credit is, or would have been, available for or with relation to the production of such fuel. The term "synthetic fuel manufactured or produced from coal" or "synthetic fuel" also means, but is not limited to, fuel manufactured or produced from coal for which credit is allowable for federal income tax purposes under section twenty-nine of the United States Internal Revenue Code, as in effect on the first day of January, two thousand one, or for which credit would have been allowable if the synthetic fuel was produced from a facility, or expansion of a facility, that meets the requirement of section twenty-nine of the Internal Revenue Code or would have met the requirements on the first day of January, two thousand one, notwithstanding that such facility or expansion of a facility may have been placed in service either prior to or subsequent to the first day of January, two thousand one. "Synthetic fuel" does not include coke or coke gas.

(7) “Synthetic fuel-producing county” means a county of this state in which a synthetic fuel-manufacturing plant is physically located that actively produces synthetic fuel during the fiscal year. For purposes of determining whether a county is a synthetic fuel-producing county, the location of the synthetic fuel-manufacturing company headquarters, the state of
incorporation or organization of the company or the location of any managerial office or facility or other office or facility of the company, other than the synthetic fuel-manufacturing plant, and the physical location where the coal or other material used in synthetic fuel manufacturing is extracted from the earth shall not be determinative of the designation of a county as a synthetic fuel-producing county.

(8) "Synthetic fuel-nonproducing county" means any county of this state other than a synthetic fuel-producing county.

(9) "Ton" means two thousand pounds.

(10) “Director of the Development Office” or “director” means the director of the West Virginia Development Office created and continued under article two, chapter five-b of this code.

(c) Credits not allowed against tax. -- When determining the amount of tax due under this section, no credit shall be allowed under section three-c or three-d of this article or under any other article of this chapter or any other chapter of this code unless it is expressly provided that the credit applies to the business and occupation tax on the privilege of manufacturing or producing synthetic fuel.

(d) Emergency rule authorized. -- The Tax Commissioner may, in the commissioner’s discretion, promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the provisions of this section.

(e) Dedication and distribution of proceeds, creation of funds. --
(1) The first four million dollars of the net amount of tax collected during each fiscal year for exercise of the privilege taxed under this section shall be deposited into the Mining and Reclamation Operations Fund created in the State Treasury by section thirty-two, article three, chapter twenty-two of this code.

(2) There is hereby created a fund in the State Treasury entitled the Synthetic Fuel-Producing Counties Grant Fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first four million dollars during each fiscal year, not to exceed two million sixty thousand dollars, shall be deposited in the Synthetic Fuel-Producing Counties Grant Fund. Moneys in the Synthetic Fuel-Producing Counties Grant Fund in excess of moneys allocated to the director of the Development Office shall be dedicated to and distributed among the synthetic fuel-producing counties under the Synthetic Fuel-Producing Counties Grant Program as provided in this section. The county commission of a synthetic fuel-producing county shall use ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund for economic development.

(3) There is hereby created in the State Treasury a fund entitled the synthetic fuel-nonproducing counties fund which shall be a revolving fund that shall carry over each fiscal year. The net amount of tax collected for exercise of the privilege taxed under this section in excess of the first six million sixty thousand dollars during each fiscal year, not to exceed two million dollars, shall be deposited in the synthetic fuel-nonproducing counties fund and equally divided and distributed
among the synthetic fuel-nonproducing counties. The county commission of a synthetic fuel-nonproducing county shall first use such moneys for Regional Jail and Correctional Facility Authority and county jail expenses, and shall use any remainder for such lawful public purposes as the county commission may prescribe.

(4) The net amount of the tax collected in excess of eight million sixty thousand dollars during each fiscal year shall be dedicated to the General Revenue Fund.

(5) The office of chief inspector shall annually determine that a county’s expenditures of moneys distributed under this section is in compliance with the requirements of this section.

(6) For purposes of this subsection, “net amount of tax collected” means the gross amount of tax collected under this section less allowed refunds and credits.

(f) Administration of the Synthetic Fuel-Producing Counties Grant Program. --

(1) The Director of the Development Office is hereby authorized and empowered to administer the distribution of moneys in the Synthetic Fuel-Producing Counties Grant Fund.

(A) On or before the plan submission due date prescribed by the Director of the Development Office, the county commission of each synthetic fuel-producing county may annually, or with such frequency as may be prescribed by the Director of the Development Office, submit a plan to the Director of the Development Office for use of the county’s provisional share of the synthetic fuel-producing counties grant fund.
(B) A grant of moneys out of the Synthetic Fuel-Producing Counties Grant Fund shall only be distributed to a synthetic fuel-producing county or encumbered for the use of a synthetic fuel-producing county after approval by the Director of the Development Office of the plan for use of the county’s provisional share of the fund, submitted to the Director of the Development Office by the county commission. The Director of the Development Office shall approve the synthetic fuel-producing county’s plan for use if the plan for use reasonably conforms to the requirements of this section and the rules promulgated with relation thereto.

(C) If the county’s plan is approved, the Director of the Development Office may authorize a grant of money out of the Synthetic Fuel-Producing Counties Grant Fund to the county to be used by the county as specified in the approved plan for use.

(D) The Director of the Development Office may authorize distribution of any amount encumbered for the use of the county and carried over from a prior period in accordance with applicable plans for use previously approved.

(E) The Director of the Development Office may authorize encumbrances for any synthetic fuel-producing county of moneys in the Synthetic Fuel-Producing Counties Grant Fund, up to the amount of the county’s provisional share for the fiscal year, for one or more qualified uses specified in the county’s plan for use if the county’s approved plan for use of the moneys sets forth a qualified use for the county’s provisional share over a period of several fiscal years or a qualified use of the moneys calling for accumulation and distribution to the county in one or more subsequent fiscal years. Encumbered funds may carry over to succeeding fiscal years and may be used to accumulate reserves over a period of time for use by the county.
(F) In no case may an amount distributed to a synthetic fuel-producing county exceed the amount of a county’s provisional share for the fiscal year plus the amount of moneys encumbered in the fund for the use of the particular county and carried over from a prior period.

(2) The Director of the Development Office may approve distributions of a county’s provisional share of the Synthetic Fuel-Producing Counties Grant Fund for use as the county’s share for state or federal matching funds programs so long as, in the aggregate, ninety percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for infrastructure improvement and ten percent of the funds distributed to the county out of the Synthetic Fuel-Producing Counties Grant Fund are used for economic development: Provided, That no county may use any amount distributed out of the Synthetic Fuel-Producing Counties Grant Fund as money to be matched under the funds matching program authorized by subsection (b), section three, article two, chapter five-b of this code.

(3) Repooling.

(A) Any synthetic fuel-producing county that has failed to have its plan, or amended and resubmitted plan or plans, approved by the Director of the Development Office for a period of eighteen months immediately subsequent to the initial plan submission date shall lose its entitlement to the provisional share of revenues deposited in the fund and attributable to the fiscal year to which that plan relates and the provisional share that would have been attributable to that county for that fiscal year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year during which the eighteen-month period ends and
shall then be reallocated equally to all synthetic fuel-producing counties as part of the provisional share of each, as if the repooled moneys were tax revenues deposited into the fund during the fiscal year in which the eighteen-month period ended. For purposes of this subsection, the “initial plan submission date” means the earlier of: (i) The required submission date, as prescribed by the Director of the Development Office, for the initial plan for use of the county’s provisional share of the Synthetic Fuel-Producing Counties Grant Fund for the fiscal year, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office; or (ii) the actual date of submission of the initial plan for the fiscal year. For purposes of this subsection, the term “initial plan” means the first plan for use that was submitted, or that should have been submitted, by a county for the fiscal year, before the submission of any amended, revised or resubmitted plan by the county for that fiscal year.

(B) Any synthetic fuel-producing county which fails to timely submit a plan for use of its provisional share of the Synthetic Fuel-Producing Counties Grant Fund, with such extensions of time to file as may be authorized under rules promulgated by the Director of the Development Office, shall lose its entitlement to its provisional share of revenues deposited in the fund and attributable to that fiscal year and the provisional share that would have been attributable to that county for that year shall be pooled with all other receipts in the Synthetic Fuel-Producing Counties Grant Fund attributable to revenues for the fiscal year and shall be reallocated equally among the remaining synthetic fuel-producing counties other than the county or counties that have failed to timely file the plan for use and shall be made available for distribution to those remaining counties, as part of their provisional share for the fiscal year.
(C) Funds encumbered pursuant to approval of the Director of the Development Office under this subsection shall not be subject to repooling: Provided, That if the Director of the Development Office determines that moneys previously distributed to a county out of the Synthetic Fuel-Producing Counties Grant Fund have not been used as required under the approved plan for the county or determines that previously distributed moneys derived from encumbered funds have not been used for the qualified purpose for which the encumbrance was originally approved or if there appears to be a reasonable probability that encumbered funds will not be used for that qualified purpose, the Director of the Development Office may revoke the encumbrance of any funds of that synthetic fuel-producing county remaining in the fund and repool the funds so encumbered for reallocation to all synthetic fuel-producing counties. The Director of the Development Office may, in the director’s discretion, give the county an opportunity to cure the nonqualified use of moneys derived from the Synthetic Fuel-Producing Counties Grant Fund or to submit an alternative plan for use of the encumbered funds which may be approved by the director if that plan complies with the requirements of this section.

(g) Promulgation of rules by the director of the Development Office authorized. -- The Director of the Development Office, in his or her discretion, may promulgate an emergency rule as provided in article three, chapter twenty-nine-a of this code that clarifies, explains or implements the Synthetic Fuel-Producing Counties Grant Program, distribution of moneys out of or encumbrance of moneys in the Synthetic Fuel-Producing Counties Grant Fund. The Director of the Development Office is hereby granted continuing authority to promulgate in accordance with article three, chapter twenty-nine-a of this code such interpretive, legislative or procedural
(h) There is hereby dedicated and allocated to the West Virginia Development Office sixty thousand dollars annually for administration of the Synthetic Fuel-Producing Counties Grant Program under this section. Sixty thousand dollars shall be paid out of the Synthetic Fuel-Producing Counties Grant Fund to the director of the Development Office each fiscal year for administration of the Synthetic Fuel-Producing Counties Grant Program.

(i) Effective date. --

(1) This section as enacted in the year two thousand took effect upon enactment. The measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.

(2) Amendments to this section enacted during the fifth extraordinary session of the Legislature in the year two thousand one shall have retroactive effect to the first day of January, two thousand one, and the measure of tax shall include all synthetic fuel sold or shipped after the first day of January, two thousand one, regardless of when the synthetic fuel was manufactured or produced in this state.
AN ACT to amend and reenact §11-10E-6, §11-10E-8 and §11-10E-9 of the Code of West Virginia, 1931, as amended, all relating to certain tax shelters used to avoid paying state income taxes; clarifying when certain penalties are imposed; determining when the tax shelter registration number is to be filed with the tax commissioner; and determining when tax shelter investor lists are to be filed with the Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10E-6, §11-10E-8 and §11-10E-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10E. TAX SHELTER VOLUNTARY COMPLIANCE PROGRAM.

§11-10E-6. Failure to register tax shelter or maintain list.
§11-10E-8. Registration of tax shelters.

§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 to comply with the requirements of
subsection (a), subsection (b) or subsection (d) of section
eight is with respect to a listed transaction described in
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 to comply with the requirements of
subsection (a) or subsection (b) of section nine is with respect
to a listed transaction described in 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-8. Registration of tax shelters.

(a) Federal tax shelter. -- Any tax shelter organizer or
material advisor 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
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19 Commissioner) by the later of: (i) Sixty days after entering
20 into the transaction; (ii) sixty days after the transaction
21 becomes a listed transaction; or (iii) the first day of July, two
22 thousand six.

23 (c) Tax shelters subject to this section for taxable years
24 commencing before the first day of January, two thousand
25 seven. -- The provisions of this section apply to any tax
26 shelter herein described in which a person:

27 (1) Organizes or participates in the sale of an interest in a
28 partnership, entity or other plan or arrangement; and

29 (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.

35 (d) Tax shelters subject to this section for taxable years commencing on or after the first day of January, two thousand seven. -- The provisions of this section apply to any tax shelter herein described in which a person organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement that is or was one or more of the following: (i) Organized in this state; (ii) doing business in this state; or (iii) deriving income from sources in this state.

(e) 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.

1 (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-l 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-l and any other information that the Tax Commissioner may require.

12 (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-l-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.

20 (c) Tax shelters subject to this section. -- The provisions of this section apply to any tax shelter herein described in which a person:

23 (1) Organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement; and

25 (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 shelters subject to this section for taxable years commencing on or after the first day of January, two thousand seven. -- The provisions of this section apply to any tax shelter herein described in which a person organizes or participates in the sale of an interest in a partnership, entity or other plan or arrangement that is or was one or more of the following: (i) Organized in this state; (ii) doing business in this state; or (iii) deriving income from sources in this state.

CHAPTER 238

(Com. Sub for H.B. 3048 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 9, 2007; in effect January 1, 2008.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-13Q-10a, relating to the economic opportunity tax credit; providing credit for specified high technology manufacturers; specifying definitions.

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 §11-13Q-10a, to read as follows:
§11-13Q-10a. Credit allowed for specified high technology manufacturers.

(a) High technology manufacturing business defined. -- For purposes of this section, the term "high technology manufacturing business" means and is limited to only those businesses engaging in a manufacturing activity properly classified as having one or more of the following six-digit North American Industry Classification System code numbers.

<table>
<thead>
<tr>
<th>North American Industry Classification System Code</th>
<th>Manufacturing Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Computer &amp; Peripheral Equipment</strong></td>
</tr>
<tr>
<td>334111</td>
<td>Electronic Computers</td>
</tr>
<tr>
<td>334112</td>
<td>Computer Storage Devices</td>
</tr>
<tr>
<td></td>
<td><strong>Electronic Components</strong></td>
</tr>
<tr>
<td>334411</td>
<td>Electron Tubes</td>
</tr>
<tr>
<td>334414</td>
<td>Electronic Capacitors</td>
</tr>
<tr>
<td></td>
<td><strong>Semiconductors</strong></td>
</tr>
<tr>
<td>334413</td>
<td>Semiconductor &amp; Related Devices</td>
</tr>
<tr>
<td>333295</td>
<td>Semiconductor Machinery</td>
</tr>
</tbody>
</table>
(b) **Amount of credit allowed.**

1. **Credit allowed.** -- An eligible high technology manufacturing business taxpayer is allowed a credit against the portion of taxes imposed by this state that are attributable to and the direct consequence of the eligible high technology manufacturing business taxpayer's qualified investment in a new or expanded high technology manufacturing business in this state which results in the creation of at least twenty new jobs within twelve months after placing qualified investment into service. The amount of this credit is determined as provided in this section.

2. **Amount of credit.** -- The annual amount of credit allowable under this subsection is one hundred percent of the tax attributable to qualified investment, for each consecutive year of a twenty-year credit period.

3. **Application of credit.** -- The annual credit allowance must be taken beginning with the taxable year in which the taxpayer places the qualified investment into service or use in this state, unless the taxpayer elects to delay the beginning of the twenty-year credit period until the next succeeding taxable year. This election is made in the annual income tax return filed under this chapter by the taxpayer for the taxable year in which the qualified investment is first placed in service or use. Once made, this election cannot be revoked. The annual credit allowance shall be taken and applied against the taxes enumerated in section seven of this article. The credit shall offset 100 percent of tax attributable to qualified investment and shall be applied for a period of twenty consecutive years without carryover.
(c) New jobs. -- The term "new jobs" has the meaning ascribed to it in section three of this article.

(1) The term "new employee" has the meaning ascribed to it in section three of this article: Provided, That this term does not include employees filling new jobs who:

(A) Are related individuals, as defined in subsection (i), section 51 of the Internal Revenue Code of 1986, or a person who owns ten percent or more of the business with such ownership interest to be determined under rules set forth in subsection (b), section 267 of the Internal Revenue Code of 1986; or

(B) Worked for the taxpayer during the six-month period ending on the date the taxpayer's qualified investment is placed in service or use and is rehired by the taxpayer during the six-month period beginning on the date taxpayer's qualified investment is placed in service or use.

(2) When a job is attributable. -- An employee's position is directly attributable to the qualified investment if:

(A) The employee's service is performed or his or her base of operations is at the new or expanded business facility;

(B) The position did not exist prior to the construction, renovation, expansion or acquisition of the business facility and the making of the qualified investment;

(C) But for the qualified investment, the position would not have existed; and
(D) The median compensation of the new jobs attributable to the qualified investment is greater than forty-five thousand dollars per year: Provided, That this median compensation amount shall be adjusted for inflation each year in accordance with the provisions of this section.

(3) Median compensation adjusted for inflation. -- The median compensation requirements applicable to high technology manufacturing business taxpayers for purposes of this section, shall be adjusted for inflation by application of a cost-of-living adjustment. The adjusted median compensation amount shall be applicable, as adjusted, each year throughout the twenty-year credit period. Failure of a taxpayer entitled to credit under this section to meet the median compensation requirement for any year will result in forfeiture of the credit for that year. However, if in any succeeding year within the original twenty year credit period, the taxpayer pays a median compensation to its employees which exceeds the inflation adjusted median compensation amount for that year, the taxpayer shall regain entitlement to take the credit for that year only. No credit forfeited in a prior year shall be taken, and the tax year or years to which the forfeited credit would have been applied shall be forfeited and deducted from the remainder of the years over which the credit can be taken.

(A) Cost-of-living adjustment. -- For purposes of this section, the cost-of-living adjustment for any calendar year is the percentage, if any, by which the consumer price index for the preceding calendar year exceeds the consumer price index for the calendar year two thousand seven.
(B) Consumer price index for any calendar year. -- For purposes of this section, the consumer price index for any calendar year is the average of the federal consumer price index as of the close of the twelve-month period ending on the thirty-first day of August of such calendar year.

(C) Consumer price index. -- For purposes of this section, the term "Federal Consumer Price Index" means the last consumer price index for all urban consumers published by the United States Department of Labor.

(D) Rounding. -- If any increase in the median compensation amount under this section is not a multiple of fifty dollars, such increase shall be rounded to the next lowest multiple of fifty dollars.

(d) Credit exclusion. --

(1) Any taxpayer that has taken the credit against tax authorized under this section shall not be eligible for application of the credit allowed under any other section of this article during the twenty year credit period authorized by this section for the same qualified investment on which credit allowed by this article was taken.

(2) Any taxpayer that has taken the credit against tax authorized under this section may not take the credit authorized under any other provision of this code for the same qualified investment on which credit allowed by this article was taken.

(e) Rules. -- The commissioner may prescribe such rules as he or she determines necessary in order to determine the
amount of credit allowed under this section to a taxpayer; to verify a taxpayer's continued entitlement to claim the credit; and to verify proper application of the credit allowed.

(f) Notices and reports. -- The commissioner may require a taxpayer intending to claim credit under this section to file with the commissioner a notice of intent to claim this credit before the taxpayer begins reducing his or her monthly or quarterly installment payments of estimated tax for the credit provided in this section.

(g) Report to the Legislature. -- The Tax Commissioner shall report to the Legislature by January 1, 2014, regarding the use of this tax credit. The Tax Commissioner shall forward this report to the Joint Committee on Government and Finance and the House and Senate Finance Committees.

CHAPTER 239

(Com. Sub. for H.B. 2945 - By Klempa, Moore, D. Poling, Rodighiero, Ellis, Iaquinta, J. Miller, Pethtel, Fragale and Hutchins)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13W-1, relating to providing for tax credits for apprenticeship training in construction trades.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13W-1, to read as follows:

ARTICLE 13W. APPRENTICESHIP TRAINING TAX CREDITS.

§11-13W-1. Tax credits for apprenticeship training in construction trades.

(a) Credit allowed. - For those tax years beginning on or after the first day of January, two thousand eight, there shall be allowed a credit for any taxpayer against certain taxes imposed by this state as described in subsection (d) of this section for wages paid to apprentices in the construction trades who are registered with the United States Department of Labor, Office of Apprenticeship, West Virginia State Office, by such taxpayer in the tax year that an apprentice and taxpayer participate in a qualified apprenticeship training program, as described in this section, which: (1) Is jointly administered by labor and management trustees; (2) is administered pursuant to 29 U.S.C. Section 50; and (3) is certified in accordance with regulations adopted by the United States Bureau of Apprenticeship and Training.

(b) Amount of credit. - The tax credit shall be in an amount equal to one dollar per hour multiplied by the total number of hours worked during the tax year by an apprentice working for the taxpayer participating in the qualified apprenticeship training program, provided the amount of credit allowed for any tax year with respect to each such apprentice may not exceed one thousand dollars or fifty percent of actual wages paid in such tax year for such apprenticeship, whichever is less.
Qualified apprenticeship training program requirements. - In addition to the qualifications specified in subsection (a) of this section, a qualified apprenticeship training program shall also be required to consist of at least two thousand but not more than ten thousand hours of on-the-job apprenticeship training for certification of such apprenticeship by the United States Bureau of Apprenticeship and Training.

Application of annual credit allowance. - The amount of credit as determined under subsection (b) of this section is allowed as a credit against the taxpayer's state tax liability applied as provided in subdivisions (1) through (3), inclusive, of this subsection, and in that order.

(1) Business franchise tax. -- The credit must first be applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year.

(2) Corporation net income taxes. - After application of subdivision (1) of this subsection, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year.

(3) Personal income taxes. --

(A) If the person making the qualified investment is an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit (after application of subdivisions (1) and (2) of this subsection) is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter.
chapter or on income of a sole proprietor attributable to the business.

(B) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by article twenty-one of this chapter.

(e) Unused credit. -- If any credit remains after application of subsection (d) of this section, the amount thereof is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.

CHAPTER 240

(Com. Sub. for H.B. 2955 - By Delegates Caputo, Manchin, Klempa, Paxton, Shook and Marshall)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §11-14C-5 and §11-14C-47 of the Code of West Virginia, 1931, as amended, all relating to the motor fuel excise tax generally; extending the date to which the rate of the flat-rate component of the motor fuel excise tax will remain at twenty and one-half cents per invoiced gallon; and requiring the Commissioner of Highways to report to the Joint Committee on Government and Finance or its designated
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subcommittee on the amount of tax paid into the state road
fund, any matching federal funds, and all expenditures
therefrom.

Be it enacted by the Legislature of West Virginia:

That §11-14C-5 of the Code of West Virginia, 1931, as
amended, be amended and reenacted; and that §11-14C-47 of said
code be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

§11-14C-47. Disposition of tax collected; dedicated receipts; reports.

PART 2. MOTOR FUEL TAX; LIABILITY.

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax
composed of a flat rate equal to twenty and one-half cents per
invoiced gallon plus a variable component comprised of
either the tax imposed by section eighteen-b, article fifteen of
this chapter or the tax imposed under section thirteen-a,
article fifteen-a of this chapter, as applicable: Provided, That
the motor fuel excise tax shall take effect the first day of
January, two thousand four: Provided, however, That on and
after the first day of August, two thousand thirteen, the flat
rate portion of the motor fuel excise tax shall be fifteen and
one-half cents per gallon: Provided further, That the variable
component shall be equal to five percent of the average
wholesale price of the motor fuel: And provided further, That
the average wholesale price shall be no less than ninety-seven
cents per invoiced gallon and is computed as hereinafter
prescribed in this section.

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(b) Determination of average wholesale price. --

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each first day of January thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of the first day of July through the thirty-first day of October. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each first day of January by filing notice of the average wholesale price in the state register, and by any other means as the Tax Commissioner considers reasonable.

(2) The “average wholesale price” means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes on each gallon of motor fuel, as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather, or a combination of information: Provided, That in no event shall the average wholesale price be determined to be less than ninety-seven cents per gallon of motor fuel.

(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of any change in rate, and in establishing and determining the average wholesale price of motor fuel, may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.
(4) In any administrative or court proceeding brought to challenge the average wholesale price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, and upon which the tax levied by this section has not been paid. For the purposes of this section, “close of the business day” means the time at which the last transaction has occurred for that day. The floorstocks tax is payable by the person in possession of the motor fuel on the first day of January, two thousand four. The amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this section multiplied by the gallons in storage as of the close of the business day preceding the first day of January, two thousand four.

(1) Persons in possession of taxable motor fuel in storage outside the bulk transfer/terminal system as of the close of the business day preceding the first day of January, two thousand four, shall:

(A) Take an inventory at the close of the business day preceding the first day of January, two thousand four, to determine the gallons in storage for purposes of determining the floorstocks tax;

(B) Report no later than the thirty-first day of January, two thousand four, the gallons on forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than the first day of June, two thousand four.
(2) In the event the tax due is paid to the commissioner on or before the thirty-first day of January, two thousand four, the person remitting the tax may deduct from their remittance five percent of the tax liability due.

(3) In the event the tax due is paid to the commissioner after the first day of June, two thousand four, the person remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax liability due.

(4) In determining the amount of floorstocks tax due under this section, the amount of motor fuel in dead storage may be excluded. There are two methods for calculating the amount of motor fuel in dead storage:

(A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more, the amount of motor fuel in dead storage is four hundred gallons; or

(B) Use the manufacturer’s conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe:

Provided, That the distance between the bottom of the tank and the bottom of the mouth of the draw pipe is presumed to be six inches.

(d) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.
§11-14C-47. Disposition of tax collected; dedicated receipts; reports.

(a) There is hereby created and established in the state treasury a special revolving fund to be known and designated as the “Motor Fuel General Tax Administration Fund.” The commissioner is authorized to retain one half of one percent of the tax collected pursuant to the provisions of this article: Provided, That in any fiscal year in which the tax collected pursuant to the provisions of this article exceed three hundred million dollars, the commissioner is authorized to retain an additional one percent of the tax in excess of the three hundred million dollars that is collected. The amounts retained by the commissioner under this subsection shall be deposited in the motor fuel general tax administration fund and may be expended for the general administration of taxes imposed by this chapter.

(b) All remaining tax collected under the provisions of this article after deducting the amount of any refunds lawfully paid shall be paid into the state road fund and used only for the purpose of construction, reconstruction, maintenance and repair of highways, matching of federal moneys available for highway purposes and payment of the interest and sinking fund obligations on state bonds issued for highway purposes.

(c) Not less than monthly, beginning the first day of July, two thousand seven, the Commissioner of Highways shall report to the Joint Committee on Government and Finance or its designated subcommittee on the amount of tax paid into the state road fund under subsection (b) of this section, any matching federal funds, and all expenditures therefrom.
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CHAPTER 241

(S.B. 631 - By Senator McCabe)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to the consumers sales and service tax generally; and providing a refundable exemption for purchases by a contractor when the purchased materials will be used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure to be used primarily by persons or entities exempt from the consumers sales and service tax on purchases.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

1 Persons who perform "contracting" as defined in section two of this article, or persons acting in an agency capacity, may not assert any exemption to which the purchaser of such contracting services or the principal is entitled. Any statutory exemption to which a taxpayer may be entitled shall be invalid unless the tangible personal property or taxable service is
actually purchased by such taxpayer and is directly invoiced to
and paid by such taxpayer: Provided, That this section shall not
apply to purchases by an employee for his or her employer;
purchases by a partner for his or her partnership; or purchases
by a duly authorized officer of a corporation, or unincorporated
organization, for his or her corporation or unincorporated
organization so long as the purchase is invoiced to and paid by
such employer, partnership, corporation or unincorporated
organization.

Transition rule. -- This section shall not apply to purchases
of tangible personal property or taxable services in fulfillment
of a purchasing agent or procurement agent contract executed
and legally binding on the parties thereto prior to the fifteenth
day of September, one thousand nine hundred ninety: Provided,
That this transition rule shall not apply to any purchases of
tangible personal property or taxable services made under such
a contract after the thirty-first day of August, one thousand nine
hundred ninety-one; and this transition rule shall not apply if the
primary purpose of the purchasing agent or procurement agent
contract was to avoid payment of consumers sales and use taxes:
Provided, however, That effective the first day of July, two
thousand seven, this section shall not apply to purchases of
services, machinery, supplies or materials, except gasoline and
special fuel, to be directly used or consumed in the construction,
alteration, repair or improvement of a new or existing building
or structure by a person performing “contracting”, as defined in
section two of this article, if the purchaser of the “contracting”
services would be entitled to claim the refundable exemption
under the provisions of subdivision (2), subsection (b), section
nine of this article had it purchased the services, machinery,
supplies or materials.
AN ACT to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to the sales tax exemption on materials used for highway construction and maintenance.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Exemptions for which exemption certificate may be issued. — A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:
(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Board of Trustees of the University System of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:
(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;
(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;
(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner’s account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: Provided, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special
134 fuel are not exempt: Provided, however, That nails and fencing
135 may not be considered as improvements to real property;

136 (9) Sales of tangible personal property to a person for the
137 purpose of resale in the form of tangible personal property:
138 Provided, That sales of gasoline and special fuel by distributors
139 and importers is taxable except when the sale is to another
140 distributor for resale: Provided, however, That sales of building
141 materials or building supplies or other property to any person
142 engaging in the activity of contracting, as defined in this article,
143 which is to be installed in, affixed to or incorporated by that
144 person or his or her agent into any real property, building or
145 structure is not exempt under this subdivision;

146 (10) Sales of newspapers when delivered to consumers by
147 route carriers;

148 (11) Sales of drugs, durable medical goods, mobility-
149 enhancing equipment and prosthetic devices dispensed upon
150 prescription and sales of insulin to consumers for medical
151 purposes. The amendment to this subdivision shall apply to
152 sales made after the thirty-first day of December, two thousand
153 three;

154 (12) Sales of radio and television broadcasting time,
155 preprinted advertising circulars and newspaper and outdoor
156 advertising space for the advertisement of goods or services;

157 (13) Sales and services performed by day care centers;

158 (14) Casual and occasional sales of property or services not
159 conducted in a repeated manner or in the ordinary course of
160 repetitive and successive transactions of like character by a
161 corporation or organization which is exempt from tax under
162 subdivision (6) of this subsection on its purchases of tangible
163 personal property or services. For purposes of this subdivision,
164 the term “casual and occasional sales not conducted in a
repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: 

Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the Board of Trustees of the University System of West Virginia or the Board of Directors of the State College System to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state Lottery Commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house
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199 heating purposes, with any seller to the consumer who may have
200 prior paid the tax in his or her price, to not pass on the same to
201 the consumer, but to make application and receive refund of the
202 tax from the Tax Commissioner pursuant to rules which are
203 promulgated after being proposed for legislative approval in
204 accordance with chapter twenty-nine-a of this code by the Tax
205 Commissioner;

206 (19) Any sales of tangible personal property or services
207 purchased and lawfully paid for with food stamps pursuant to
208 the federal food stamp program codified in 7 U. S. C. §2011, et
209 seq., as amended, or with drafts issued through the West
210 Virginia special supplement food program for women, infants
211 and children codified in 42 U. S. C. §1786;

212 (20) Sales of tickets for activities sponsored by elementary
213 and secondary schools located within this state;

214 (21) Sales of electronic data processing services and related
215 software: Provided, That, for the purposes of this subdivision,
216 “electronic data processing services” means:

217 (A) The processing of another’s data, including all
218 processes incident to processing of data such as keypunching,
219 keystroke verification, rearranging or sorting of previously
220 documented data for the purpose of data entry or automatic
221 processing and changing the medium on which data is sorted,
222 whether these processes are done by the same person or several
223 persons; and

224 (B) Providing access to computer equipment for the purpose
225 of processing data or examining or acquiring data stored in or
226 accessible to the computer equipment;

227 (22) Tuition charged for attending educational summer
228 camps;
(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;
(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: Provided, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying
on functions and activities of the groups: Provided, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: Provided, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the constitution of this state;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer’s immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for
admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: Provided, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certified or licensed carrier of persons or property, or by a governmental entity, as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for a certified or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: Provided, That the gross receipts of the individual from the performance of baby-sitting services do not exceed five thousand dollars in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;
(37) Commissions received by a manufacturer’s representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the State of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following
enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semifinished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the
owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, air shows or any other public meeting, display or show other than those specified herein: Provided, however, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The state Tax Commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: Provided further, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the
association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: Provided, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;
(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after the first day of December, one thousand nine hundred ninety-seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) Refundable exemptions. -- Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in
section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire-fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: Provided, That sales of gasoline and special fuel are taxable;
(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended; and

(6) Sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project: Provided, That in lieu of any refund or credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to the Division of Highways for deposit into the State Road Fund of the state reimbursement for the tax in the amount estimated under the provisions of this subdivision: Provided, however, That by the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an itemized listing of highways projects with the amount of funds expended for highway construction and maintenance. The Commissioner of Highways shall request reimbursement of the tax based on an estimate that forty percent of the total gross funds expended by the agency during the fiscal period were for the acquisition of materials used for highway construction and maintenance. The amount of the reimbursement shall be calculated at six percent of the forty percent.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9i, relating to exempting the purchase of certain drugs, durable medical goods, mobility enhancing equipment and prosthetic devices from the consumers sales and service tax.

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 §11-15-9i, to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9i. Exempt drugs, durable medical goods, mobility enhancing equipment and prosthetic devices.

(a) Notwithstanding any provision of this article, article fifteen-a or article fifteen-b of this chapter, the purchase by a health care provider of drugs, durable medical goods, mobility enhancing equipment and prosthetic devices, all as defined in section two, article fifteen-b of this chapter, to be dispensed upon prescription and intended for use in the
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(b) For purposes of this exemption, "health care provider" means any person licensed to prescribe drugs, durable medical goods, mobility enhancing equipment and prosthetic devices intended for use in the diagnosis, cure, mitigation, treatment, or prevention of injury or disease in humans. For purposes of this section, the term "health care provider" includes any hospital, medical clinic, nursing home, or provider of inpatient hospital services and any provider of outpatient hospital services, physician services, nursing services, ambulance services, or surgical services.

(c) This section shall be effective the first day of July, two thousand seven.
Be it enacted by the Legislature of West Virginia:

That §11-15-16 and §11-21-74 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) Payment of tax. -- Subject to the exceptions set forth in subsection (b) of this section, the taxes levied by this article are due and payable in monthly installments, on or before the twentieth day of the month next succeeding the month in which the tax accrued, except as otherwise provided in this article.

(b) Tax return. -- The taxpayer shall, on or before the twentieth day of each month, make out and mail to the tax commissioner a return for the preceding month, in the form prescribed by the tax commissioner, showing:

1. The total gross proceeds of the vendor's business for the preceding month;

2. The gross proceeds of the vendor's business upon which the tax is based;

3. The amount of the tax for which the vendor is liable; and

4. Any further information necessary in the computation and collection of the tax which the tax commissioner may require, except as otherwise provided in this article or article fifteen-b of this chapter.
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21 (c) Remittance to accompany return. -- Except as
otherwise provided in this article or article fifteen-b of this
chapter, a remittance for the amount of the tax shall
accompany the return.

25 (d) Deposit of collected tax. -- Tax collected by the tax
commissioner shall be deposited as provided in section thirty
of this article, except that:

28 (1) Tax collected on sales of gasoline and special fuel
shall be deposited in the state road fund; and

30 (2) Any sales tax collected by the alcohol beverage
control commissioner from persons or organizations licensed
under authority of article seven, chapter sixty of this code
shall be paid into a revolving fund account in the state
treasury, designated the drunk driving prevention fund, to be
administered by the commission on drunk driving prevention,
subject to appropriations by the Legislature.

37 (e) Return to be signed. -- A return shall be signed by the
taxpayer or the taxpayer's duly authorized agent, when a
paper return is prepared and filed. When the return is filed
electronically, the return shall include the digital mark or
digital signature, as defined in article three, chapter thirty-
nine-a of this code, or the personal identification number of
the taxpayer, or the taxpayer's duly authorized agent, made in
accordance with any procedural rule that may be promulgated
by the Tax Commissioner.

46 (f) Accelerated payment. --

47 (1) Taxpayers whose average monthly payment of the
taxes levied by this article and article fifteen-a of this chapter
during the previous calendar year exceeds one hundred
thousand dollars, shall remit the tax attributable to the first
fifteen days of June each year on or before the twentieth day of June: Provided, That on and after the first day of June, two thousand seven, the provisions of this subsection (f) that require the accelerated payment on or before the twentieth day of June of the tax imposed by this article and article fifteen-a of this chapter are no longer effective, and any such tax due and owing shall be payable in accordance with subsection (a) of this section.

For purposes of complying with subdivision (1) of this subsection the taxpayer shall remit an amount equal to the amount of tax imposed by this article and article fifteen-a of this chapter on actual taxable sales of tangible personal property and custom software and sales of taxable services during the first fifteen days of June or, at the taxpayer's election, the taxpayer may remit an amount equal to fifty percent of the taxpayer's liability for tax under this article on taxable sales of tangible personal property and custom software and sales of taxable services made during the preceding month of May.

For a business which has not been in existence for a full calendar year, the total tax due from the business during 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 tax attributable to the first fifteen days of June each year shall be remitted on or before the twentieth day of June as provided in subdivision (2) of this subsection.

When a taxpayer required to make an advanced payment of 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, the taxpayer may claim as a credit against liability under this article for tax on taxable
transactions during the month of June, the amount of the
advanced payment of tax made under subdivision (1) of this
subsection.

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 taxes so required
to be deducted and withheld, if such withheld taxes aggregate
two hundred fifty dollars or more for the month, except any
employer with respect to whom the Tax Commissioner may
have by regulation provided otherwise in accordance with the
provisions of subsection (a) of this section.

(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
corner dollars shall remit the tax attributable to the first
fifteen days of June each year on or before the twenty-third
day of June: Provided, That on and after the first day of
June, two thousand seven, the provisions of this subsection
(e) that require the accelerated payment on or before the
twenty-third day of June of the tax imposed by this article are
no longer effective, and any such tax due and owing shall be
payable in accordance with subsection (a) of this section.

(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
compensation 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...
125 does not do so is subject to a penalty in the amount of
126 twenty-five dollars per employee for whom the return was
127 not filed electronically, unless the employer shows that the
128 failure is due to reasonable cause and not due to willful
129 neglect.

CHAPTER 245

(Com. Sub. for S.B. 569 - By Senators Plymale,
Jenkins and Kessler)

[Passed March 8, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2007.]

AN ACT to amend and reenact §11-15-18b of the Code of West
Virginia, 1931, as amended; to amend said code by adding
thereto a new section, designated §11-24-43a; and to amend
said code by adding thereto two new sections, designated §17-
16B-7a and §17-16B-7b, all relating to dedicating up to four
million three hundred thousand dollars from annual collections
of the corporation net income tax for construction,
reconstruction, maintenance and repair of railways, the
construction of railway-related structures and payment of
principal and interest on state bonds issued for railway
purposes, as approved by the West Virginia Public Port
Authority; creating the Special Railroad and Intermodal
Enhancement Fund into which those funds are deposited and
from which expenditures are made under the administration of
the West Virginia Public Port Authority; providing
administrative procedures for the State Tax Commissioner’s
derosit of those funds; providing an expiration date for the
deposit of those funds; and directing a study relating to the
feasibility of the planning, development, construction and
operation of the intermodal facility at Prichard, West Virginia.

2232
Be it enacted by the Legislature of West Virginia:

That §11-15-18b 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 §11-24-43a; and that said code be amended by adding thereto two new sections, designated §17-16B-7a and §17-16B-7b, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18b. Tax on motor fuel effective the first day of January, two thousand four.

(a) General. -- Effective the first day of January, two thousand four, all sales of motor fuel subject to the flat rate of the tax imposed by section five, article fourteen-c of this chapter are subject to the tax imposed by this article which shall comprise the variable component of the tax imposed by said section and be collected and remitted at the time the tax imposed by said section is remitted. Sales of motor fuel upon which the tax imposed by this article has been paid shall not thereafter be again taxed under the provisions of this article. This section is construed so that all gallons of motor fuel sold and delivered, or delivered, in this state are taxed one time.

(b) Measure of tax. -- The measure of tax imposed by this article on sales of motor fuel is the average wholesale price
as defined and determined in section five, article fourteen-c of this chapter. For purposes of maintaining revenue for highways, and recognizing that the tax imposed by this article is generally imposed on gross proceeds from sales to ultimate consumers, whereas the tax on motor fuel herein is imposed on the average wholesale price of the motor fuel; in no case, for the purposes of taxation under this article, shall the average wholesale price be determined to be less than ninety-seven cents per gallon of motor fuel for all gallons of motor fuel sold during the reporting period, notwithstanding any provision of this article to the contrary.

(c) Definitions. -- For purposes of this article, the terms "gasoline" and "special fuel" are defined as provided in section two, article fourteen-c of this chapter. Other terms used in this section have the same meaning as when used in a similar context in said article.

(d) Tax return and tax due. -- The tax imposed by this article on sales of motor fuel shall be paid by each taxpayer on or before the last day of the calendar month by check, bank draft, certified check or money order payable to the Tax Commissioner for the amount of tax due for the preceding month, notwithstanding any provision of this article to the contrary: Provided, That the commissioner may require all or certain taxpayers to file tax returns and payments electronically. The return required by the commissioner shall accompany the payment of tax: Provided, however, That if no tax is due, the return required by the commissioner shall be completed and filed on or before the last day of the month.

(e) Compliance. -- To facilitate ease of administration and compliance by taxpayers, the Tax Commissioner shall require persons liable for the tax imposed by this article on sales of motor fuel to file a combined return and make a combined payment of the tax due under this article on sales
of motor fuel and the tax due under article fourteen-c of this chapter on motor fuel. In order to encourage use of a combined return each month and the making of a single payment each month for both taxes, the due date of the return and tax due under said article is the last day of each month, notwithstanding any provision in said article to the contrary.

(f) Dedication of tax. -- All tax collected under the provisions of this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the Road Fund in the State Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and repair of highways and payment of principal and interest on state bonds issued for highway purposes: Provided, That notwithstanding any provision to the contrary, any tax collected on the sale of aviation fuel after deducting the amount of any refunds lawfully paid shall be deposited in the State Treasurer's office and transferred to the State Aeronautical Commission to be used for the purpose of matching federal funds available for the reconstruction, maintenance and repair of public airports and airport runways.

(g) Construction. -- This section is not construed as taxing any sale of motor fuel which this state is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

(h) Effective date. -- The provisions of this section take effect on the first day of January, two thousand four. The provisions of this section enacted during the two thousand seven Legislative session take effect on the first day of January, two thousand eight.
ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-43a. Dedication of tax proceeds to railways.

(a) Beginning the first day of January, two thousand eight, there is hereby dedicated an annual amount of up to four million three hundred thousand dollars from annual collections of the tax imposed by this article for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority.

(b) For purposes of administering the deposits required by this subdivision, after the thirty-first day of December, two thousand seven, from the taxes imposed by this section and paid to the Tax Commissioner in each quarter of the year, after deducting the amount of any refunds lawfully paid and any administrative costs authorized by this code, the Tax Commissioner shall pay into the Special Railroad and Intermodal Enhancement Fund provided for in section seven-a, article sixteen-b, chapter seventeen of this code an amount equal to at least one million seventy-five thousand dollars. In any quarter where the collections are less than the amount required to be paid into the Special Railroad and Intermodal Enhancement Fund, or where the total amount paid in any year will be less than four million three hundred thousand dollars, the difference shall be paid from amounts available from collections in succeeding quarters until paid in full. Notwithstanding any provision of this section to the contrary, the total amount to be deposited into the Special Railroad and Intermodal Enhancement Fund for the year two thousand sixteen shall not exceed two million one hundred fifty thousand dollars.
(c) Notwithstanding any provision of this section to the contrary, all provisions of this section relating to requiring the deposit of moneys in the Special Railroad and Intermodal Enhancement Fund shall expire at the end of the thirtieth day of June, two thousand sixteen.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.

There is hereby established in the State Treasury a Special Railroad and Intermodal Enhancement Fund, which shall consist of all amounts deposited into the fund pursuant to section forty-three-a, article twenty-four, chapter eleven of this code. The Special Railroad and Intermodal Enhancement Fund shall be administered by the West Virginia Public Port Authority. The money deposited in the fund shall be used only for the purpose of construction, reconstruction, maintenance and repair of railways, the construction of railway-related structures and payment of principal and interest on state bonds issued for railway purposes, as approved by the West Virginia Public Port Authority.

§17-16B-7b. Study of feasibility intermodal facility at Prichard, West Virginia.

The West Virginia Public Port Authority shall conduct a study relating to the feasibility of the planning, development, construction and operation of the intermodal facility at Prichard, West Virginia, to determine whether the same is sustainable.
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 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
9 amendments made to the laws of the United States after the
10 thirty-first day of December, two thousand five, but prior to
11 the first day of January, two thousand seven, shall be given
12 effect in determining the taxes imposed by this article to the
13 same extent those changes are allowed for federal income tax
14 purposes, whether the changes are retroactive or prospective,
15 but no amendment to the laws of the United States made on
16 or after the first day of January, two thousand seven, shall be
17 given any effect.

18 (b) Medical savings accounts. -- The term "taxable trust"
19 does not include a medical savings account established
20 pursuant to section twenty, article fifteen, chapter thirty-three
21 of this code or section fifteen, article sixteen of said chapter.
22 Employer contributions to a medical savings account
23 established pursuant to said sections are not "wages" for
24 purposes of withholding under section seventy-one of this
25 article.

26 (c) Surtax. -- The term "surtax" means the twenty percent
27 additional tax imposed on taxable withdrawals from a
28 medical savings account under section twenty, article fifteen,
29 chapter thirty-three of this code and the twenty percent
30 additional tax imposed on taxable withdrawals from a
31 medical savings account under section fifteen, article sixteen
32 of said chapter which are collected by the Tax Commissioner
33 as tax collected under this article.

34 (d) Effective date. -- The amendments to this section
35 enacted in the year two thousand seven are retroactive to the
36 extent allowable under federal income tax law. With respect
37 to taxable years that began prior to the first day of January,
38 two thousand seven, the law in effect for each of those years
39 shall be fully preserved as to that year, except as provided in
40 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 247

(S.B. 749 - By Senators Helmick, Plymale, Chafin, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Sypolt, Fanning, Facemyer, Boley, Sprouse and Guills)

[Passed March 10, 2007; in effect from passage.]
[Approved by the Governor on April 4, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-23-5b; to amend and reenact §11-23-6 and §11-23-27 of said code; to amend and reenact §11-24-1, §11-24-3a, §11-24-7, §11-24-13a and §11-24-24 of said code; and to amend said code by adding thereto four new sections, designated §11-24-13c, §11-24-13d, §11-24-13e and §11-24-13f, all relating to business taxes generally; reducing the business franchise tax; and requiring combined reporting of certain taxes upon businesses.

Be it enacted by the Legislature of West Virginia:

That of the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-23-5b;
that §11-23-6 and §11-23-27 of said code be amended and reenacted; that §11-24-1, §11-24-3a, §11-24-7, §11-24-13a and §11-24-24 of said code be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §11-24-13c, §11-24-13d, §11-24-13e and §11-24-13f, all to read as follows:

Article

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-5b. Apportionment of income of financial organizations.

1 Notwithstanding any other provisions of this article or this code to the contrary, for tax years beginning on or after the first day of January, two thousand nine, the provisions of section five-a of this article are null and void and of no force or effect.

§11-23-6. Imposition of tax; change in rate of tax.

(a) General. -- An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protection conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state and from every partnership owning or leasing real or tangible personal property located in this state or doing business in this state, effective on and after the first day of July, one thousand nine hundred eighty-seven.
(b) Amount of tax and rate; effective date. --

(1) On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer’s first taxable year under this article is a short taxable year, the taxpayer’s liability shall be prorated based upon the ratio which the number of months in which such short taxable year bears to twelve: Provided, however, That this subdivision shall not apply to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine.

(2) Taxable years after the thirty-first day of December, one thousand nine hundred eighty-eight. -- For taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine, the amount of tax due under this article shall be the greater of fifty dollars or seventy-five one hundredths of one percent of the value of the tax base as determined under this article.

(3) Taxable years after the thirtieth day of June, one thousand nine hundred ninety-seven. -- For taxable years beginning on or after the first day of July, one thousand nine hundred ninety-seven, the amount of tax due under this article shall be the greater of fifty dollars or seventy hundredths of one percent of the value of the tax base as determined under this article.

(4) Taxable years after the thirty-first day of December, two thousand six. -- For taxable years beginning on or after the first day of January, two thousand seven, the amount of tax due under this article shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base as determined under this article.
(5) Taxable years after the thirty-first day of December, two thousand eight. -- For taxable years beginning on or after the first day of January, two thousand nine, the amount of tax due under this article shall be the greater of fifty dollars or forty-eight one hundredths of one percent of the value of the tax base as determined under this article.

(6) Taxable years after the thirty-first day of December, two thousand nine. -- For taxable years beginning on or after the first day of January, two thousand ten, the amount of tax due under this article shall be the greater of fifty dollars or forty-one one hundredths of one percent of the value of the tax base as determined under this article.

(7) Taxable years after the thirty-first day of December, two thousand ten. -- For taxable years beginning on or after the first day of January, two thousand eleven, the amount of tax due under this article shall be the greater of fifty dollars or thirty-four one hundredths of one percent of the value of the tax base as determined under this article.

(8) Taxable years after the thirty-first day of December, two thousand eleven. -- For taxable years beginning on or after the first day of January, two thousand twelve, the amount of tax due under this article shall be the greater of fifty dollars or twenty-seven one hundredths of one percent of the value of the tax base as determined under this article.

(9) Taxable years after the thirty-first day of December, two thousand twelve. -- For taxable years beginning on or after the first day of January, two thousand thirteen, the amount of tax due under this article shall be the greater of fifty dollars or twenty one hundredths of one percent of the value of the tax base as determined under this article.
(c) Short taxable years. -- When the taxpayer's taxable year for federal income tax purposes is a short taxable year, the tax determined by application of the tax rate to the taxpayer's tax base shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve: Provided, That when the taxpayer's first taxable year under this article is less than twelve months, the taxpayer’s liability shall be prorated based upon the ratio which the number of months the taxpayer was doing business in this state bears to twelve but in no event shall the tax due be less than fifty dollars.

§11-23-27. Credit for franchise tax paid to another state.

(a) Effective for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, and notwithstanding any provisions of this code to the contrary, any financial organization having its commercial domicile in this state shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state and which tax was based upon or measured by the financial organization's capital and was paid with respect to the same taxable year; or

(2) The portion of the tax actually paid that the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the law of such other state.
(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section, and any refunds of such taxes, made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

(c) For tax years beginning on or after the first day of January, two thousand nine, the provisions of this section are null and void and of no force or effect.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-1. Legislative findings.

§11-24-3a. Specific terms defined.


§11-24-13c. Determination of taxable income or loss using combined report.

§11-24-13d. Determination of the business income of the combined group.

§11-24-13e. Designation of surety.

§11-24-13f. Water’s-edge election; initiation and withdrawal.

§11-24-24. Credit for income tax paid to another state.

§11-24-1. Legislative findings.

The Legislature hereby finds and declares that the adoption by this state for its corporation net income tax purposes of certain provisions of the laws of the United States relating to the determination of income for federal income tax purposes will: (1) Simplify preparation of state corporation net income tax returns by taxpayers; (2) improve enforcement of the state corporation net income tax through better use of information obtained from federal income tax audits; and (3) aid interpretation of the state corporation net
income tax law through increased use of federal judicial and administrative determinations and precedents.

The Legislature does, therefore, declare that this article be construed so as to accomplish the foregoing purposes.

In recognition of the fact that corporate business is increasingly conducted on a national and international basis, it is the intent of the Legislature to adopt a combined system of income tax reporting for corporations. A separate accounting system is sometimes not adequate to accurately measure the income of multistate and multinational corporations doing business in this state and sometimes creates tax disadvantages for West Virginia corporations in competition with those multistate and multinational corporations. Therefore, it is the intent of the Legislature to capture lost revenue with adoption of a combined reporting tax base.

§11-24-3a. Specific terms defined.

For purposes of this article:

(1) Business income. -- The term “business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property or the rendering of services in connection therewith constitute integral parts of the taxpayer’s regular trade or business operations and includes all income which is apportionable under the Constitution of the United States.

(2) “Combined group” means the group of all persons whose income and apportionment factors are required to be taken into account pursuant to subsection (a) or (b), section
(3) Commercial domicile. -- The term “commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed: Provided, That the commercial domicile of a financial organization, which is subject to regulation as such, shall be at the place designated as its principal office with its regulating authority.

(4) Compensation. -- The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(5) Corporation. -- “Corporation” means any corporation as defined by the laws of this state or organization of any kind treated as a corporation for tax purposes under the laws of this state, wherever located, which if it were doing business in this state would be a “taxpayer”. The business conducted by a partnership which is directly or indirectly held by a corporation shall be considered the business of the corporation to the extent of the corporation’s distributive share of the partnership income, inclusive of guaranteed payments to the extent prescribed by regulation. The term “corporation” includes a joint-stock company and any association or other organization which is taxable as a corporation under the federal income tax law.

(6) Delegate. -- The term “delegate” in the phrase “or his delegate”, when used in reference to the Tax Commissioner, means any officer or employee of the State Tax Department 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 regulations promulgated thereunder.
45 (7) Domestic corporation. -- The term “domestic corporation” means any corporation organized under the laws of West Virginia and certain corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred sixty-three. Every other corporation is a foreign corporation.

51 (8) Engaging in business. -- The term “engaging in business” or “doing business” means any activity of a corporation which enjoys the benefits and protection of government and laws in this state.

55 (9) Federal Form 1120. -- The term “Federal Form 1120” means the annual federal income tax return of any corporation made pursuant to the United States Internal Revenue Code of 1986, as amended, or in successor provisions of the laws of the United States, in respect to the federal taxable income of a corporation, and filed with the federal Internal Revenue Service. In the case of a corporation that elects to file a federal income tax return as part of an affiliated group, but files as a separate corporation under this article, then as to such corporation Federal Form 1120 means its pro forma Federal Form 1120.

66 (10) Fiduciary. -- The term “fiduciary” means, and includes, a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

70 (11) Financial organization. -- The term “financial organization” means:

72 (A) A holding company or a subsidiary thereof. As used in this section “holding company” means a corporation registered under the federal Bank Holding Company Act of
75 1956 or registered as a savings and loan holding company
76 other than a diversified savings and loan holding company
77 (as defined in Section 408(a)(1)(F) of the federal National
78 Housing Act (12 U. S. C. §1730(a)(1)(F));
79
80 (B) A regulated financial corporation or a subsidiary
81 thereof. As used in this section “regulated financial
82 corporation” means:
83
84 (1) An institution, the deposits, shares or accounts of
85 which are insured under the Federal Deposit Insurance Act or
86 by the federal Savings and Loan Insurance Corporation;
87
88 (2) An institution that is a member of a federal home loan
89 bank;
90
91 (3) Any other bank or thrift institution incorporated or
92 organized under the laws of a state that is engaged in the
93 business of receiving deposits;
94
95 (4) A credit union incorporated and organized under the
96 laws of this state;
97
98 (5) A production credit association organized under 12 U.
99 S. C. §2071;
100
102 through §631 (an Edge act corporation); or
103
104 (7) A federal or state agency or branch of a foreign bank
105 (as defined in 12 U. S. C. §3101); or
106
107 (C) A corporation which derives more than fifty percent
108 of its gross business income from one or more of the
109 following activities:
(1) Making, acquiring, selling or servicing loans or extensions of credit. Loans and extensions of credit include:

(I) Secured or unsecured consumer loans;

(II) Installment obligations;

(III) Mortgages or other loans secured by real estate or tangible personal property;

(IV) Credit card loans;

(V) Secured and unsecured commercial loans of any type; and

(VI) Loans arising in factoring.

(2) Leasing or acting as an agent, broker or advisor in connection with leasing real and personal property that is the economic equivalent of an extension of credit (as defined by the Federal Reserve Board in 12 C. F. R. 225.25(b)(5)).

(3) Operating a credit card business.

(4) Rendering estate or trust services.

(5) Receiving, maintaining or otherwise handling deposits.

(6) Engaging in any other activity with an economic effect comparable to those activities described in item (1), (2), (3), (4) or (5) of this subparagraph.

(12) Fiscal year. -- The term “fiscal year” means an accounting period of twelve months ending on any day other
than the last day of December and on the basis of which the taxpayer is required to report for federal income tax purposes.

(13) *Includes and including.* -- The terms “includes” and “including”, when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(14) “Internal Revenue Code” means Title 26 of the United States Code, as amended, without regard to application of federal treaties unless expressly made applicable to states of the United States.

(15) *Nonbusiness income.* -- The term “nonbusiness income” means all income other than business income.

(16) “Partnership” means a general or limited partnership, or organization of any kind treated as a partnership for tax purposes under the laws of this state.

(17) *Person.* -- The term “person” is to be deemed interchangeable with the term “corporation” in this section. The term “person” means any individual, firm, partnership, general partner of a partnership, limited liability company, registered limited liability partnership, foreign limited liability partnership, association, corporation (whether or not the corporation is, or would be if doing business in this state, subject to the tax imposed by this article), company, syndicate, estate, trust, business trust, trustee, trustee in bankruptcy, receiver, executor, administrator, assignee or organization of any kind.

(18) *Pro forma return.* -- The term “pro forma return” when used in this article means the return which the taxpayer
152 would have filed with the Internal Revenue Service had it not
153 elected to file federally as part of an affiliated group.

154 (19) Public utility. -- The term “public utility” means any
155 business activity to which the jurisdiction of the Public
156 Service Commission of West Virginia extends under section
157 one, article two, chapter twenty-four of this code.

158 (20) Sales. -- The term “sales” means all gross receipts of
159 the taxpayer that are “business income”, as defined in this
160 section.

161 (21) State. -- The term “state” means any state of the
162 United States, the District of Columbia, the Commonwealth
163 of Puerto Rico, any territory or possession of the United
164 States and any foreign country or political subdivision
165 thereof.

166 (22) Taxable year, tax year. -- The term “taxable year” or
167 “tax year” means the taxable year for which the taxable
168 income of the taxpayer is computed under the federal income
169 tax law.

170 (23) Tax. -- The term “tax” includes, within its meaning,
171 interest and additions to tax, unless the intention to give it a
172 more limited meaning is disclosed by the context.

173 (24) Tax Commissioner. -- The term “Tax
174 Commissioner” means the Tax Commissioner of the State of
175 West Virginia or his delegate.

176 (25) “Tax haven” means a jurisdiction that, for a
177 particular tax year in question: (A) Is identified by the
178 Organization for Economic Cooperation and Development as
179 a tax haven or as having a harmful preferential tax regime; or
(B) a jurisdiction that has no, or nominal, effective tax on the relevant income and: (i) That has laws or practices that prevent effective exchange of information for tax purposes with other governments regarding taxpayers subject to, or benefiting from, the tax regime; or (ii) that lacks transparency. For purposes of this definition, a tax regime lacks transparency if the details of legislative, legal or administrative provisions are not open to public scrutiny and apparent, or are not consistently applied among similarly situated taxpayers; (iii) facilitates the establishment of foreign-owned entities without the need for a local substantive presence or prohibits these entities from having any commercial impact on the local economy; (iv) explicitly or implicitly excludes the jurisdiction’s resident taxpayers from taking advantage of the tax regime’s benefits or prohibits enterprises that benefit from the regime from operating in the jurisdiction’s domestic market; or (v) has created a tax regime which is favorable for tax avoidance, based upon an overall assessment of relevant factors, including whether the jurisdiction has a significant untaxed offshore financial or other services sector relative to its overall economy. For purposes of this definition, the phrase “tax regime” means a set or system of rules, laws, regulations or practices by which taxes are imposed on any person, corporation or entity, or on any income, property, incident, indicia or activity pursuant to governmental authority.

(26) Taxpayer. -- The term “taxpayer” means any person subject to the tax imposed by this article.

(27) This code. -- The term “this code” means the Code of West Virginia, one thousand nine hundred thirty-one, as amended.
(28) *This state.* -- The term “this state” means the State of West Virginia.

(29) “United States” means the United States of America and includes all of the states of the United States, the District of Columbia and United States territories and possessions.

(30) “Unitary business” means a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts.

(31) *West Virginia taxable income.* -- The term “West Virginia taxable income” means the taxable income of a corporation as defined by the laws of the United States for federal income tax purposes, adjusted, as provided in this article: Provided, That in the case of a corporation having income from business activity which is taxable without this state, its “West Virginia taxable income” shall be such portion of its taxable income as so defined and adjusted as is allocated or apportioned to this state under the provisions of this article.


(a) *General.* -- Any taxpayer having income from business activity which is taxable both in this state and in another state shall allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer’s federal taxable income adjusted as provided in section six of this article.
(b) "Taxable in another state" defined. -- For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

1. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporation stock tax; or
2. That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) Business activities entirely within West Virginia. -- If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not "taxable in another state": Provided, That for tax years beginning before the first day of January, two thousand nine, the business activities of a financial organization having its commercial domicile in this state are considered to take place entirely in this state, notwithstanding that the organization may be "taxable in another state": Provided, however, That for tax years beginning before the first day of January, two thousand nine, the income from the business activities of a financial organization not having its commercial domicile in this state shall be apportioned according to the applicable provisions of this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. -- If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also
taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer, shall be allocated as provided in subdivisions (1) through (4), inclusive, of this subsection: Provided, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) Net rents and royalties. --

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state; or

(ii) In their entirety if the taxpayer’s commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or
royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains. --

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale; or

(ii) The taxpayer’s commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer’s commercial domicile is in this state.

(D) Gains pursuant to Section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) Interest and dividends are allocable to this state if the taxpayer’s commercial domicile is in this state.

(4) Patent and copyright royalties. --
(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer’s commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer’s commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer’s commercial domicile is located.

(5) *Corporate partner’s distributive share.* --

(A) Persons carrying on business as partners in a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, are liable for income tax only in their separate or individual capacities.
(B) A corporate partner’s distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after the thirty-first day of December, one thousand nine hundred ninety-eight, the distributive share shall then be allocated and apportioned as provided in this section, using the partnership’s property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this state shall then be treated as distributive share allocated to this state; and that portion of distributive share allocated or apportioned outside this state shall be treated as distributive share allocated outside this state, unless the taxpayer requests or the Tax Commissioner, under subsection (h) of this section requires that the distributive share be treated differently.

(e) Business activities partially within and partially without this state; apportionment of business income. -- All net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if any, having no denominator.

(1) Property factor. -- The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer’s real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all
real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) Value of property. -- Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: Provided, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term “net annual rental rate” is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

(3) Movable property. -- The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be
determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) Leasehold improvements. -- Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) Average value of property. -- The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: Provided, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) Payroll factor. -- The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the
(7) Compensation. -- The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. -- The term “employee” means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. -- Compensation is paid or accrued in this state if:

(A) The employee’s service is performed entirely within this state; or

(B) The employee’s service is performed both within and without this state, but the service performed without the state is incidental to the individual’s service within this state. The word “incidental” means any service which is temporary or
transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee’s base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee’s residence is in this state.

The term “base of operations” is the place of more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term “place from which the service is directed or controlled” refers to the place from which the power to direct or control is exercised by the taxpayer.

(10) Sales factor. -- The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income), and reflected in its gross income reported
and as appearing on the taxpayer’s Federal Form 1120, and consisting of those certain pertinent portions of the (gross income) elements set forth: Provided, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property. --

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the f. o. b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.
(12) **Allocation of other sales.** -- Sales, other than sales of tangible personal property, are in this state if:

(A) The income-producing activity is performed in this state; or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in subsection (b), section seven-b of this article.

(13) **Financial organizations and other taxpayers with business activities partially within and partially without this state.** -- Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection apply to the apportionment of income from their business activities except as expressly otherwise provided in subsection (b), section seven-b of this article.

(f) **Income-producing activity.** -- The term “income-producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income-
producing activity” includes, but is not limited to, the following:

1. The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

2. The sale, rental, leasing, licensing or other use of real property;

3. The sale, rental, leasing, licensing or other use of tangible personal property; or

4. The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income-producing activity: Provided, That the conduct of the business of a financial organization is an income-producing activity.

(g) Cost of performance. -- The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment. --

1. General. -- If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer’s business activities in this state, the taxpayer may petition for or the Tax Commissioner may require, in respect to all or any part of the taxpayer’s business activities, if reasonable:
(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer’s income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner’s objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with such detail and proof as the Tax Commissioner may require.

(2) **Alternative method for public utilities.** -- If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the taxpayer’s business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, as an alternative to the other methods provided for in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer’s net income in accordance with any system of accounts prescribed by the public service commission of this state pursuant to the provisions of section eight, article two, chapter twenty-four of this code: **Provided,** That the allocation and apportionment provisions of the system of accounts fairly represent the extent of the taxpayer’s business activities in this state for the purposes of the tax imposed by this article.
(3) **Burden of proof.** -- In any proceeding before the Tax Commissioner or in any court in which employment of one of the methods of allocation or apportionment provided for in subdivision (1) or (2) of this subsection is sought, on the ground that the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is:

(A) If the Tax Commissioner seeks employment of one of the methods, on the Tax Commissioner; or

(B) If the taxpayer seeks employment of one of the other methods, on the taxpayer.

(4) For tax years beginning on or after the first day of January, two thousand nine, the provisions of sections seven-a and seven-b of this article shall be null and void and of no force or effect.

§11-24-13a. **Method of filing for business taxes.**

(a) **Privilege to file consolidated return.** --

(1) An affiliated group of corporations (as defined for purposes of filing a consolidated federal income tax return) shall, subject to the provisions of this section and in accordance with any regulations prescribed by the Tax Commissioner, have the privilege of filing a consolidated return with respect to the tax imposed by this article for the taxable year in lieu of filing separate returns. The making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group are included in such return and consent to the filing of such return. The filing of
a consolidated return shall be considered as such consent.
When a corporation is a member of an affiliated group for a
fractional part of the year, the consolidated return shall
include the income of such corporation for that part of the
year during which it is a member of the affiliated group.

(2) For tax years beginning on and after the first day of
January, two thousand nine, the provisions of this subsection
are null and void and of no further force or effect.

(b) Election binding. --

(1) If an affiliated group of corporations elects to file a
consolidated return under this article for any taxable year
ending after the thirtieth day of June, one thousand nine
hundred eighty-seven, such election once made shall not be
revoked for any subsequent taxable year without the written
approval of the Tax Commissioner consenting to the
revocation.

(2) For tax years beginning on and after the first day of
January, two thousand nine, the provisions of this subsection
are null and void and of no further force or effect.

(c) Consolidated return - financial organizations. --

An affiliated group that includes one or more financial
organizations may elect under this section to file a
consolidated return when that affiliated group complies with
all of the following rules:

(1) The affiliated group of which the financial
organization is a member must file a federal consolidated
income tax return for the taxable year.
(2) All members of the affiliated group included in the federal consolidated return must consent to being included in the consolidated return filed under this article. The filing of a consolidated return under this article is conclusive proof of such consent.

(3) The West Virginia taxable income of the affiliated group shall be the sum of:

   (A) The pro forma West Virginia taxable income of all financial organizations having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

   (B) The pro forma West Virginia taxable income of all financial organizations not having their commercial domicile in this state that are included in the federal consolidated return, as shown on a combined pro forma West Virginia return prepared for such financial organizations; plus

   (C) The pro forma West Virginia taxable income of all other members included in the federal consolidated income tax return, as shown on a combined pro forma West Virginia return prepared for all such nonfinancial organization members, except that income, income adjustments and exclusions, apportionment factors and other items considered when determining tax liability shall not be included in the pro forma return prepared under this paragraph for a member that is totally exempt from tax under section five of this article, or for a member that is subject to a different special industry apportionment rule provided for in this article. When a different special industry apportionment rule applies, the West Virginia taxable income of a member(s) subject to that special industry apportionment rule shall be determined on a
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71 separate pro forma West Virginia return for the member(s) subject to that special industry rule and the West Virginia taxable income so determined shall be included in the consolidated return.

75 (4) The West Virginia consolidated return is prepared in accordance with regulations of the Tax Commissioner promulgated as provided in article three, chapter twenty-nine-a of this code.

79 (5) The filing of a consolidated return does not distort taxable income. In any proceeding, the burden of proof that taxpayer’s method of filing does not distort taxable income shall be upon the taxpayer.

83 (6) For tax years beginning on and after the first day of January, two thousand nine, the provisions of this subsection are null and void and of no further force or effect.

86 (d) Combined return. --

87 (1) A combined return may be filed under this article by a unitary group, including a unitary group that includes one or more financial organizations, only pursuant to the prior written approval of the Tax Commissioner. A request for permission to file a combined return must be filed on or before the statutory due date of the return, determined without inclusion of any extension of time to file the return. Permission to file a combined return may be granted by the Tax Commissioner only when taxpayer submits evidence that conclusively establishes that failure to allow the filing of a combined return will result in an unconstitutional distortion of taxable income. When permission to file a combined return is granted, combined filing will be allowed for the year(s) stated in the Tax Commissioner’s letter. The
combined return must be filed in accordance with regulations of the Tax Commissioner promulgated in accordance with article three, chapter twenty-nine-a of this code.

(2) For tax years beginning on and after the first day of January, two thousand nine, the provisions of this subsection are null and void and of no further force or effect.

(e) Method of filing under this article deemed controlling for purposes of other business taxes articles. --

The taxpayer shall file on the same basis under article twenty-three of this chapter as such taxpayer files under this article for the taxable year.

(f) Regulations. --

The Tax Commissioner shall prescribe such regulations as he may deem necessary in order that the tax liability of any affiliated group or combined group of corporations filing a consolidated return, or of any unitary group of corporations filing a combined return, and of each corporation in the affiliated or unitary group, both during and after the period of affiliation, may be returned, determined, computed, assessed, collected and adjusted, in such manner as the Tax Commissioner deems necessary to clearly reflect the income tax liability and the income factors necessary for the determination of such liability, and in order to prevent avoidance of such tax liability.

(g) Computation and payment of tax. --

In any case in which a consolidated or combined return is filed, or required to be filed, the tax due under this article from the affiliated, combined or unitary group shall be
determined, computed, assessed, collected and adjusted in accordance with regulations prescribed by the Tax Commissioner, in effect on the last day prescribed by section thirteen of this article for the filing of such return, and such affiliated, combined or unitary group, as the case may be, shall be treated as the taxpayer. However, when any member of an affiliated, combined or unitary group that files a consolidated or combined return under this article is allowed to claim credit against its tax liability under this article for payment of any other tax, the amount of credit allowed may not exceed that member’s proportionate share of the affiliated, combined or unitary group’s precredit tax liability under this article, as shown on its pro forma return.

(h) **Consolidated or combined return may be required.** --

The Tax Commissioner may require any person or corporation to make and file a separate return or to make and file a composite, unitary, consolidated or combined return, as the case may be, in order to clearly reflect the taxable income of such corporations.

(i) **Effective date.** --

The amendments to this section made by chapter one hundred seventy-nine, Acts of the Legislature in the year one thousand nine hundred ninety, shall apply to all taxable years ending after the eighth day of March, one thousand nine hundred ninety. Amendments to this article enacted by this act in the year one thousand nine hundred ninety-six shall apply to taxable years beginning on or after the first day of January, one thousand nine hundred ninety-six, except that financial organizations that are part of an affiliated group may elect, after the effective date of this act, to file a consolidated return prepared in accordance with the
provisions of this section, as amended, and subject to applicable statutes of limitation, for taxable years beginning on or after the first day of January, one thousand nine hundred ninety-one, but before the first day of January, one thousand nine hundred ninety-six, notwithstanding provisions then in effect prohibiting out-of-state financial organizations from filing consolidated returns for those years: Provided, That when the statute of limitation on filing an amended return for any of those years expires before the first day of July, one thousand nine hundred ninety-six, the consolidated return for such year, if filed, must be filed by said first day of July.

(j) Combined reporting required. --

For tax years beginning on and after the first day of January, two thousand nine, any taxpayer engaged in a unitary business with one or more other corporations shall file a combined report which includes the income, determined under section thirteen-c or thirteen-d of this article, and the allocation and apportionment of income provisions of this article, of all corporations that are members of the unitary business, and such other information as may be required by the Tax Commissioner.

(k) Combined reporting at Tax Commissioner’s discretion. --

(1) The Tax Commissioner may require the combined report to include the income and associated apportionment factors of any persons that are not included pursuant to subsection (j) of this section, but that are members of a unitary business, in order to reflect proper apportionment of income of the entire unitary businesses. The Tax Commissioner may require combination of persons that are
(2) If the Tax Commissioner determines that the reported income or loss of a taxpayer engaged in a unitary business with any person not included pursuant to subsection (j) of this section represents an avoidance or evasion of tax by such taxpayer, the Tax Commissioner may, on a case-by-case basis, require all or any part of the income and associated apportionment factors of such person be included in the taxpayer’s combined report.

(3) With respect to inclusion of associated apportionment factors pursuant to this section, the Tax Commissioner may require the exclusion of any one or more of the factors, the inclusion of one or more additional factors which will fairly represent the taxpayer’s business activity in this state, or the employment of any other method to effectuate a proper reflection of the total amount of income subject to apportionment and an equitable allocation and apportionment of the taxpayer’s income.

§11-24-13c. Determination of taxable income or loss using combined report.

(a) The use of a combined report does not disregard the separate identities of the taxpayer members of the combined group. Each taxpayer member is responsible for tax based on its taxable income or loss apportioned or allocated to this state, which shall include, in addition to other types of income, the taxpayer member’s apportioned share of business income of the combined group, where business income of the combined group is calculated as a summation of the individual net business incomes of all members of the combined group. A member’s net business income is
11 determined by removing all but business income, expense
and loss from that member’s total income, as provided in this
section and section thirteen-d of this article.

(b) Components of income subject to tax in this state;
application of tax credits and post-apportionment deductions. --

(1) Each taxpayer member is responsible for tax based on
its taxable income or loss apportioned or allocated to this
state, which shall include:

(A) Its share of any business income apportionable to this
State of each of the combined groups of which it is a
member, determined under subsection (c) of this section;

(B) Its share of any business income apportionable to this
state of a distinct business activity conducted within and
without the state wholly by the taxpayer member, determined
under the provisions for apportionment of business income
set forth in this article;

(C) Its income from a business conducted wholly by the
taxpayer member entirely within the state;

(D) Its income sourced to this state from the sale or
exchange of capital or assets, and from involuntary
conversions, as determined under subsection (g), section
thirteen-d of this article;

(E) Its nonbusiness income or loss allocable to this state,
determined under the provisions for allocation of nonbusiness
income set forth in this article;

(F) Its income or loss allocated or apportioned in an
earlier year, required to be taken into account as state source
income during the income year, other than a net operating loss; and

(2) Except where otherwise provided, no tax credit or post-apportionment deduction earned by one member of the group, but not fully used by or allowed to that member, may be used, in whole or in part, by another member of the group or applied, in whole or in part, against the total income of the combined group; and a post-apportionment deduction carried over into a subsequent year as to the member that incurred it, and available as a deduction to that member in a subsequent year, will be considered in the computation of the income of that member in the subsequent year regardless of the composition of that income as apportioned, allocated or wholly within this state.

(c) Determination of taxpayer’s share of the business income of a combined group apportionable to this state.

The taxpayer’s share of the business income apportionable to this State of each combined group of which it is a member shall be the product of:
(1) The business income of the combined group, determined under section thirteen-d of this article; and

(2) The taxpayer member’s apportionment percentage, determined in accordance with this article, associated with the combined group’s unitary business in this state, and including in the denominator the property, payroll and sales of all members of the combined group, including the taxpayer, which property, payroll and sales are associated with the combined group’s unitary business wherever located. The property, payroll and sales of a partnership shall be included in the determination of the partner’s apportionment percentage in proportion to a ratio the numerator of which is the amount of the partner’s distributive share of partnership’s unitary income included in the income of the combined group in accordance with section thirteen-d of this article and the denominator of which is the amount of the partnership’s total unitary income.

§11-24-13d. Determination of the business income of the combined group.

The business income of a combined group is determined as follows:

(a) From the total income of the combined group, determined under subsection (b) of this section, subtract any income and add any expense or loss, other than the business income, expense or loss of the combined group.

(b) Except as otherwise provided, the total income of the combined group is the sum of the income of each member of the combined group determined under federal income tax laws, as adjusted for state purposes, as if the member were
not consolidated for federal purposes. The income of each
member of the combined group shall be determined as
follows:

(1) For any member incorporated in the United States, or
included in a consolidated federal corporate income tax
return, the income to be included in the total income of the
combined group shall be the taxable income for the
corporation after making allowable adjustments under this
article.

(2) For any member not included in subdivision (1) of
this subsection, the income to be included in the total income
of the combined group shall be determined as follows:

(A) A profit and loss statement shall be prepared for each
foreign branch or corporation in the currency in which the
books of account of the branch or corporation are regularly
maintained.

(B) Adjustments shall be made to the profit and loss
statement to conform it to the accounting principles generally
accepted in the United States for the preparation of such
statements except as modified by this regulation.

(C) Adjustments shall be made to the profit and loss
statement to conform it to the tax accounting standards
required by this article.

(D) Except as otherwise provided by regulation, the profit
and loss statement of each member of the combined group,
and the apportionment factors related thereto, whether United
37 States or foreign, shall be translated into the currency in
38 which the parent company maintains its books and records.

39 (E) Income apportioned to this state shall be expressed in
40 United States dollars.

41 (3) In lieu of the procedures set forth in subdivision (2)
42 of this subsection, and subject to the determination of the Tax
43 Commissioner that it reasonably approximates income as
determined under this article, any member not included in
subdivision (1) of this subsection may determine its income
on the basis of the consolidated profit and loss statement
which includes the member and which is prepared for filing
with the Securities and Exchange Commission by related
corporations. If the member is not required to file with the
Securities and Exchange Commission, the Tax Commissioner
may allow the use of the consolidated profit and loss
statement prepared for reporting to shareholders and subject
to review by an independent auditor. If above statements do
not reasonably approximate income as determined under this
article, the Tax Commissioner may accept those statements
with appropriate adjustments to approximate that income.

57 (c) If a unitary business includes income from a
58 partnership, the income to be included in the total income of
59 the combined group shall be the member of the combined
group’s direct and indirect distributive share of the
60 partnership’s unitary business income.

62 (d) All dividends paid by one to another of the members
63 of the combined group shall, to the extent those dividends are
64 paid out of the earnings and profits of the unitary business
included in the combined report, in the current or an earlier year, be eliminated from the income of the recipient. This provision shall not apply to dividends received from members of the unitary business which are not a part of the combined group.

(e) Except as otherwise provided by regulation, business income from an intercompany transaction between members of the same combined group shall be deferred in a manner similar to 26 CFR 1.1502-13. Upon the occurrence of any of the following events, deferred business income resulting from an intercompany transaction between members of a combined group shall be restored to the income of the seller, and shall be apportioned as business income earned immediately before the event:

(1) The object of a deferred intercompany transaction is:

(A) Resold by the buyer to an entity that is not a member of the combined group;

(B) Resold by the buyer to an entity that is a member of the combined group for use outside the unitary business in which the buyer and seller are engaged; or

(C) Converted by the buyer to a use outside the unitary business in which the buyer and seller are engaged; or

(2) The buyer and seller are no longer members of the same combined group, regardless of whether the members remain unitary.
(f) A charitable expense incurred by a member of a combined group shall, to the extent allowable as a deduction pursuant to Internal Revenue Code Section 170, be subtracted first from the business income of the combined group (subject to the income limitations of that section applied to the entire business income of the group) and any remaining amount shall then be treated as a nonbusiness expense allocable to the member that incurred the expense (subject to the income limitations of that section applied to the nonbusiness income of that specific member). Any charitable deduction disallowed under the foregoing rule, but allowed as a carryover deduction in a subsequent year, shall be treated as originally incurred in the subsequent year by the same member and the rules of this section shall apply in the subsequent year in determining the allowable deduction in that year.

(g) Gain or loss from the sale or exchange of capital assets, property described by Internal Revenue Code Section 1231(a)(3) and property subject to an involuntary conversion shall be removed from the total separate net income of each member of a combined group and shall be apportioned and allocated as follows:

(1) For each class of gain or loss (short term capital, long term capital, Internal Revenue Code Section 1231 and involuntary conversions) all members’ business gain and loss for the class shall be combined (without netting between such classes) and each class of net business gain or loss separately apportioned to each member using the member’s apportionment percentage determined under subsection (c), section thirteen-c of this article.
(2) Each taxpayer member shall then net its apportioned business gain or loss for all classes, including any such apportioned business gain and loss from other combined groups, against the taxpayer member’s nonbusiness gain and loss for all classes allocated to this state, using the rules of Internal Revenue Code Sections 1222 and 1231, without regard to any of the taxpayer member’s gains or losses from the sale or exchange of capital assets, Section 1231 property and involuntary conversions which are nonbusiness items allocated to another state.

(3) Any resulting state source income (or loss, if the loss is not subject to the limitations of Internal Revenue Code Section 1211) of a taxpayer member produced by the application of the preceding subsections shall then be applied to all other state source income or loss of that member.

(4) Any resulting state source loss of a member that is subject to the limitations of Section 1211 shall be carried over by that member and shall be treated as state source short-term capital loss incurred by that member for the year for which the carryover applies.

(h) Any expense of one member of the unitary group which is directly or indirectly attributable to the nonbusiness or exempt income of another member of the unitary group shall be allocated to that other member as corresponding nonbusiness or exempt expense, as appropriate.

§11-24-13e. Designation of surety.

As a filing convenience, and without changing the respective liability of the group members, members of a combined reporting group may annually elect to designate one taxpayer member of the combined group to file a single
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5 return in the form and manner prescribed by the department,
6 in lieu of filing their own respective returns, provided that the
7 taxpayer designated to file the single return consents to act as
8 surety with respect to the tax liability of all other taxpayers
9 properly included in the combined report and agrees to act as
10 agent on behalf of those taxpayers for the year of the election
11 for tax matters relating to the combined report for that year.
12 If for any reason the surety is unwilling or unable to perform
13 its responsibilities, tax liability may be assessed against the
14 taxpayer members.

§11-24-13f. Water’s-edge election; initiation and withdrawal.

1 (a) Water’s-edge election. --

2 Taxpayer members of a unitary group that meet the
3 requirements of subsection (b) of this section may elect to
4 determine each of their apportioned shares of the net business
5 income or loss of the combined group pursuant to a water’s-
6 edge election. Under such election, taxpayer members shall
7 take into account all or a portion of the income and
8 apportionment factors of only the following members
9 otherwise included in the combined group pursuant to section
10 thirteen-a of this article:

11 (1) The entire income and apportionment factors of any
12 member incorporated in the United States or formed under
13 the laws of any state, the District of Columbia or any territory
14 or possession of the United States;

15 (2) The entire income and apportionment factors of any
16 member, regardless of the place incorporated or formed, if
the average of its property, payroll and sales factors within the United States is twenty percent or more;

(3) The entire income and apportionment factors of any member which is a domestic international sales corporation as described in Internal Revenue Code Sections 991 to 994, inclusive; a foreign sales corporation as described in Internal Revenue Code Sections 921 to 927, inclusive; or any member which is an export trade corporation, as described in Internal Revenue Code Sections 970 to 971, inclusive;

(4) Any member not described in subdivision (1), (2) or (3) of this subsection shall include the portion of its income derived from or attributable to sources within the United States, as determined under the Internal Revenue Code without regard to federal treaties, and its apportionment factors related thereto;

(5) Any member that is a “controlled foreign corporation”, as defined in Internal Revenue Code Section 957, to the extent of the income of that member that is defined in Section 952 of Subpart F of the Internal Revenue Code (“Subpart F income”) not excluding lower-tier subsidiaries’ distributions of such income which were previously taxed, determined without regard to federal treaties, and the apportionment factors related to that income;

any item of income received by a controlled foreign corporation shall be excluded if such income was subject to an effective rate of income tax imposed by a foreign country greater than ninety percent of the maximum rate of tax specified in Internal Revenue Code Section 11;

(6) Any member that earns more than twenty percent of its income, directly or indirectly, from intangible property or service-related activities that are deductible against the
(7) The entire income and apportionment factors of any member that is doing business in a tax haven, where “doing business in a tax haven” is defined as being engaged in activity sufficient for that tax haven jurisdiction to impose a tax under United States constitutional standards. If the member’s business activity within a tax haven is entirely outside the scope of the laws, provisions and practices that cause the jurisdiction to meet the criteria set forth in the definition of a tax haven, the activity of the member shall be treated as not having been conducted in a tax haven.

(b) *Initiation and withdrawal of election.* --

(1) A water’s-edge election is effective only if made on a timely filed, original return for a tax year by every member of the unitary business subject to tax under this article. The Tax Commissioner shall develop rules and regulations governing the impact, if any, on the scope or application of a water’s-edge election, including termination or deemed election, resulting from a change in the composition of the unitary group, the combined group, the taxpayer members and any other similar change.

(2) Such election shall constitute consent to the reasonable production of documents and taking of depositions in accordance with the provisions of this code.

(3) In the discretion of the Tax Commissioner, a water’s-edge election may be disregarded, in part or in whole, and the income and apportionment factors of any member of the taxpayer’s unitary group may be included in the combined
report without regard to the provisions of this section, if any
member of the unitary group fails to comply with any
provision of this article or if a person otherwise not included
in the water’s-edge combined group was availed of with a
substantial objective of avoiding state income tax.

(4) A water’s-edge election is binding for and applicable
to the tax year it is made and all tax years thereafter for a
period of ten years. It may be withdrawn or reinstated after
withdrawal, prior to the expiration of the ten-year period,
only upon written request for reasonable cause based on
extraordinary hardship due to unforeseen changes in state tax
statutes, law or policy and only with the written permission
of the Tax Commissioner. If the Tax Commissioner grants a
withdrawal of election, he or she shall impose reasonable
conditions as necessary to prevent the evasion of tax or to
clearly reflect income for the election period prior to or after
the withdrawal. Upon the expiration of the ten-year period, a
taxpayer may withdraw from the water’s-edge election. Such
withdrawal must be made in writing within one year of the
expiration of the election and is binding for a period of ten
years, subject to the same conditions as applied to the
original election. If no withdrawal is properly made, the
water’s-edge election shall be in place for an additional ten-
year period, subject to the same conditions as applied to the
original election.

§11-24-24. Credit for income tax paid to another state.

(a) Effective for taxable years beginning on or after the
first day of January, one thousand nine hundred ninety-one,
and notwithstanding any provisions of this code to the
contrary, any financial organization, the business activities of which take place, or are deemed to take place, entirely within this state, shall be allowed a credit against the tax imposed by this article for any taxable year for taxes paid to another state. That credit shall be equal in amount to the lesser of:

(1) The taxes such financial organization shall actually have paid, which payments were made on or before the filing date of the annual return required by this article, to any other state and which tax was based upon or measured by the financial organization’s net income and was paid with respect to the same taxable year; or

(2) The amount of such tax the financial organization would have paid if the rate of tax imposed by this article is applied to the tax base determined under the laws of such other state.

(b) Any additional payments of such tax to other states, or to political subdivisions thereof, by a financial organization described in this section and any refunds of such taxes made or received by such financial organization with respect to the taxable year, but after the due date of the annual return required by this article for the taxable year, including any extensions, shall likewise be accounted for in the taxable year in which such additional payment is made or such refund is received by the financial organization.

(c) For tax years beginning on or after the first day of January, two thousand nine, the provisions of this section are null and void and of no force or effect.
AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; and specifying effective dates.

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 five, but prior to the first day of January, two thousand seven, 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 seven, 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 seven 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 seven, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-24-11b, relating to providing tax credits for utility taxpayers with a net operating loss prior to the thirty-first day of December, two thousand six.

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 §11-24-11b, to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-11b. Credit for utility taxpayers with net operating loss carryovers.

(a) General. -- There shall be allowed to every eligible taxpayer a nonrefundable credit against its primary tax liability imposed under this article for any net operating loss carryovers that exist as of the thirty-first day of December, two thousand six.

(b) (1) "Eligible taxpayer" means any person subject to the business and occupation taxes prescribed by article thirteen of this chapter and exercising any privilege taxable under section two-o of this article.
(2) "Eligible taxpayer" also includes an affiliated group of taxpayers if the group elects to file a consolidated corporation net income tax return under this article if one or more affiliates included in the affiliated group would qualify as an eligible taxpayer under subdivision (1) of this subsection.

(c) Amount of credit. — The amount of credit allowed shall be equal to one-quarter percent of the eligible taxpayer’s West Virginia net operating loss carryovers allowed by subsection (d), section six of this article that exist as of the thirty-first day of December, two thousand six.

(d) Application of credit. — The amount of credit allowed shall be taken against the tax liabilities of the eligible taxpayer under this article as shown on its annual return for the taxable year in which its net operating loss carryovers are utilized, as provided in subsection (d), section six of this article. Any credit remaining after application against the eligible taxpayer’s tax liabilities for the current year may be carried forward to subsequent tax years until used.

CHAPTER 250

(H.B. 2992 - By Delegates White, Kominar, Reynolds, Perdue, Marshall, Laquinta, Stalnaker, Ashley, Evans, Border and Walters)

[Passed March 9, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2007.]

AN ACT to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, relating to decreasing the health care provider tax imposed on gross receipts of providers of nursing facility services and setting forth effective date.
Be it enacted by the Legislature of West Virginia:

That §11-27-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for the mentally retarded.

(a) Imposition of tax. -- For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for the mentally retarded, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care-related tax: Provided, That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax without first obtaining approval from the health care authority: Provided, however, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment shall be exempt from prospective review by the health care authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The health care authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review shall be subject to the penalties imposed under article twenty-nine-b, chapter sixteen of the code.
(b) *Rate and measure of tax.* -- The tax imposed in subsection (a) of this section shall be five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for the mentally retarded. This rate shall be increased to five and ninety-five one hundredths percent of the gross receipts received or receivable by providers of nursing facility services after the thirtieth day of June, two thousand four and shall again be decreased to five and one-half percent of the gross receipts received or receivable by providers of nursing services after the thirty-first day of October, two thousand seven.

(c) *Definitions.* --

(1) "Gross receipts" means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided,* That accrual basis providers shall be allowed to reduce gross receipts by their bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) "Nursing facility services" means those services that are nursing facility services for purposes of Section 1903(w) of the Social Security Act.

(d) *Effective date.* -- The tax imposed by this section shall apply to gross receipts received or receivable by providers after the thirty-first day of May, one thousand nine hundred ninety-three.
AN ACT to amend and reenact §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all relating to legislative appropriation of tobacco settlement funds; setting forth legislative findings and purposes; receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund; receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund; creating Tobacco Settlement Finance Authority and providing for general powers; establishing governing board of the authority; defining staff of the authority; limiting liability; providing certain definitions; authorizing sale of rights in a master settlement agreement; authorizing bonds of the authority; providing for the use of proceeds of bonds of the authority; providing an exemption from state purchasing provisions; providing bankruptcy provisions; establishing the dissolution of the authority; ensuring a revenue source remains for the unfunded liabilities of the Old Fund to replace previous legislative appropriation of tobacco settlement funds for the benefit of the Old Fund; and construction of article.
Be it enacted by the Legislature of West Virginia:

That §4-11A-1, §4-11A-2 and §4-11A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto fourteen new sections, designated §4-11A-1a, §4-11A-6, §4-11A-7, §4-11A-8, §4-11A-9, §4-11A-10, §4-11A-11, §4-11A-12, §4-11A-13, §4-11A-14, §4-11A-15, §4-11A-16, §4-11A-17 and §4-11A-18, all to read as follows:

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS; CREATION OF TOBACCO SETTLEMENT FINANCE AUTHORITY.

§4-11A-1. Legislative findings and purpose.

§4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers’ Compensation Debt Reduction 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.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

§4-11A-6. Creation of Tobacco Settlement Finance Authority.


§4-11A-9. Staff; assistance by state officers; agencies and departments.

§4-11A-10. Limitation of liability.


§4-11A-12. Authorization of the sale of rights in the master settlement agreement.


§4-11A-14. Exemption from purchasing provisions.


§4-11A-16. Dissolution of the authority; distribution of assets.

§4-11A-17. Construction.

§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.
§4-11A-1. Legislative findings and purpose.

(a) On the twenty-third day of November, one thousand nine hundred ninety-eight, tobacco product manufacturers entered into a settlement agreement with the state. This master settlement agreement releases those manufacturers from past, present and specific future claims against them in return for payment of annual sums of money to the state, obligates the manufacturers to change their advertising and marketing practices and requires the establishment by the manufacturers of a national foundation for the interests of public health.

(b) The revenues received pursuant to the master settlement agreement are directly related to the past, present and future costs incurred by the state for the treatment of tobacco-related illnesses. The receipt of revenues in the future is subject to the ongoing risk of litigation against manufacturers or other events that may adversely affect the financial strength of the manufacturers. The purpose of this article is to preserve the revenues received from the settlement.

(c) The receipt of funds in accordance with the master settlement agreement shall be deposited only in accordance with the provisions of this article.

(d) The state receives revenue each year under the terms of the master settlement agreement with the tobacco manufacturers. This revenue is used to fund programs of vital importance to the people of West Virginia and the Legislature finds that it is in the best interest of the people of this state to protect these revenues by the sale of the state’s share to the Tobacco Settlement Finance Authority created in section six of this article.
§4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers’ Compensation Debt Reduction Fund.

(a) In December, two thousand five, the Governor issued a proclamation regarding the privatization of the workers’ compensation system pursuant to section eleven, article two-c, chapter twenty-three of this code, thereby proclaiming that a revenue source had been secured to satisfy the Old Fund liabilities as they occur;

(b) A portion of the revenue source secured to satisfy the Old Fund liabilities as they occur was the first thirty million dollars received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement;

(c) For purposes of the proclamation, it was assumed that the first thirty million dollars received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement as calculated pursuant to subsection (a), section twelve of this article would on a calendar year basis provide a maximum of forty-five million dollars per year to satisfy the Old Fund liabilities as they occur;

(d) The Legislature finds and declares that replacing the first thirty million dollars received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement with fifty million four hundred thousand dollars...
pursuant to section eighteen of this article for the benefit of the Old Fund, in combination with the remaining portions of the revenue sources secured for the unfunded liabilities of the Old Fund as established in Enrolled Senate Bill No. 1004 during the first extraordinary session of the Legislature, two thousand five, will ensure that a revenue source has been and will continue to remain secured to satisfy the Old Fund liabilities as they occur; and thus all conditions precedent to the issuance of the proclamation by the Governor remain in effect.

§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 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:

(1) All interest or return on investment accruing to the fund;

(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;

(3) Any appropriations by the Legislature which may be made for this purpose; and

(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.

(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 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 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 master settlement agreement, beginning in two thousand eight, shall be deposited in their entirety in the Workers’ Compensation Debt Reduction Fund.
(f) Notwithstanding anything in this code to the contrary, on the effective date of the sale of the state’s share to the authority as authorized in this article, the deposits and transfers provided in this section shall cease and no longer be required.

§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.

(c) Notwithstanding anything in this code to the contrary, on the effective date of the sale of the state’s share to the authority as authorized in this article, the deposits and transfers provided in this section shall cease and no longer be required.

§4-11A-6. Creation of Tobacco Settlement Finance Authority.

(a) The Tobacco Settlement Finance Authority is hereby created and constitutes a body corporate and politic, constituting a public corporation and government instrumentality of the state and the exercise of its powers pursuant to this article is an essential governmental function.

(b) The authority shall not create any obligation of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitation.

(c) The authority shall not pledge the credit or taxing power of the state or any political subdivision of this state, or make its debts payable out of any moneys except those of the authority specifically pledged for their payment.

Unless the context clearly indicates otherwise, as used in this article:

(a) "Authority" means the Tobacco Settlement Finance Authority created in this article.

(b) "Board" means the governing board of the authority.

(c) "Bonds" means bonds, notes and other obligations and financing arrangements issued or entered into by the authority pursuant to this article.

(d) "Complementary legislation" means article nine-d, chapter sixteen of this code.

(e) "Interest rate agreement" means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.

(f) "Master settlement agreement" means the master settlement agreement as defined in section one of this article.

(g) "Net proceeds" means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds, to fund an operating expense reserve for the authority, to fund capitalized interest, if any, and to pay the costs of issuance and other expenses and fees related to the authorization and issuance of bonds.
(h) "Notes" means notes, warrants, loan agreements and all other forms of evidence of indebtedness authorized under this article.

(i) "Qualified investments" means investments of the authority authorized pursuant to this article as established by the authority pursuant to subdivision (11), subsection (a), section eleven of this article.

(j) "Qualifying statute" has the meaning given that term in the master settlement agreement, constituting article nine-b, chapter sixteen of this code.

(k) "Sales agreement" means any agreement authorized pursuant to this article in which the state provides for the sale of all or a portion of the state’s share to the authority.

(l) "State’s share" means all of the following:

(1) All payments required to be made by tobacco product manufacturers to the state, and the state’s rights to receive the payments, under the master settlement agreement.

(2) The state’s rights in any collateral securing or otherwise assuring the receipt of the moneys.


(a) The powers of the authority are vested in and shall be exercised by a board of five individuals, consisting of the Secretary of the Department of Administration, who shall act as chairperson, the Treasurer of the State of West Virginia,
and three individuals, each appointed by the Governor, who shall have skill and experience in finance.

(b) Three members of the board constitute a quorum.

(c) The members shall elect a vice chairperson and secretary, annually, and other officers as the members determine necessary.

(d) Meetings of the board shall be held at the call of the chairperson or when a majority of the members request a meeting.

(e) The members of the board shall not receive compensation by reason of their membership on the board.

(f) Of the initial appointments made by the Governor to the authority, two shall be for a term of two years and two shall be for a term of three years. Members appointed to the authority subsequent to the initial appointments shall serve for terms of four years. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

§4-11A-9. Staff; assistance by state officers, agencies and departments.

(a) The Secretary of the Department of Administration shall furnish to the authority any secretarial, clerical, technical, research and other services that are necessary to the conduct of the business of the authority.
(b) State officers, agencies and departments may render services to the authority within their respective functions, as requested by the authority.

§4-11A-10. Limitation of liability.

Members of the board and persons acting on the authority’s behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this article.


(a) The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including, but not limited to, the power to:

(1) Enter into sales agreements and acquire by purchase, grant, lease, gift or otherwise from the state its right, title and interest in and to the state’s share, including, without limitation, the rights of the state to receive the moneys due to it under this article and the rights in any collateral securing or otherwise assuring the receipt of the moneys;

(2) Sell, pledge or assign, as security or consideration, the state’s share sold to the authority pursuant to one or more sales agreements, to provide for and secure the issuance and repayment of its bonds or to implement alternative funding options;

(3) Issue and sell one or more series or classes of bonds, notes or other obligations through public bidding, private
(4) Refund and refinance the authority’s debts and obligations and to manage its funds, obligations and investments as necessary and if consistent with its purpose;

(5) Enter into funding options consistent with this article, including refunding and refinancing its debt and obligations;

(6) Enter into credit enhancements, liquidity agreements or interest rate agreements;

(7) Have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with this article;

(8) Sue and be sued in its own name;

(9) Make and execute agreements, contracts and other instruments with any public or private person, in accordance with this chapter;

(10) Retain or employ counsel, auditors, investment bankers, trustees, economic experts and any other private consultants and advisors, on a contract basis or otherwise, necessary or desirable for rendering legal, banking, financial or other professional, management or technical services or advice in connection with the acquisition and financing referred to in this article and pay for all of the services from the proceeds of the bonds;

(11) Establish investment guidelines, designate qualified investments and invest funds;
(12) Procure insurance, other credit enhancements, liquidity agreements and other financing arrangements and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority; and to fulfill the purposes of the authority under this article, including, but not limited to, any arrangements, instruments, contracts and agreements as municipal bond insurance, liquidity facilities, interest rate agreements and letters of credit;

(13) Determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms, documentation and other details of the financing;

(14) Hold, use, sell, convey, mortgage, pledge, exchange or otherwise dispose of the state’s share and any proceeds or further rights associated with the state’s share;

(15) Establish a trust which is entitled to receive revenues and bond proceeds of the authority that are in excess of the authority’s expenses, debt service and contractual obligations and to transfer its ownership interest in the trust to the state as the noncash portion of the purchase price for the state’s share; and

(16) Include in its agreements with the holders of the bonds the nonimpairment pledge as described in subdivision (8), subsection (c), section twelve of this article.

(b) Other than the payments of debt service on its bonds, the authority may not make payments or distributions to private interests or private individuals unless those payments are reasonable in amount and paid in exchange for the performance of services.
§4-11A-12. Authorization of the sale of rights in the master settlement agreement.

(a) The sale of the state’s share shall be authorized by an executive order issued by the Governor as authorized in this section. The executive order shall be received by the Secretary of State and filed in the State Register pursuant to section three, article two, chapter twenty-nine-a of this code: Provided, That the Governor shall not issue the executive order unless the aggregate collective amount of net sale proceeds received by the state from the sale of the state’s share is more than eight hundred million dollars.

(b) The Governor may sell and assign all or a portion of the state’s share to the authority pursuant to one or more sales agreements for the purpose of securitization of the amounts received by the state under the master settlement agreement.

(c) The terms and conditions of the sale established in any sales agreement shall include the following:

(1) A requirement that the state enforce its right to collect all moneys due from the participating tobacco manufacturers pursuant to the provisions of the master settlement agreement, including, without limitation, the state’s share that has been sold to the authority under a sales agreement, and, in addition, that the state shall diligently enforce the qualifying statute as contemplated in section IX (d)(2)(b) of the master settlement agreement and the complementary legislation against all tobacco product manufacturers selling tobacco products in the state and that are not in compliance with the qualifying statute or the complementary legislation, in each case in the manner and to the extent considered necessary in the judgment of the Attorney General of the state;
(2) A requirement that the state not agree to any amendment of the master settlement agreement, the qualifying statute, the complementary legislation, this article or the sales agreement that materially and adversely affects the authority’s ability or rights to receive the state's share that has been sold to the authority or the authority’s rights and powers under this article and the sales agreement;

(3) An agreement that the anticipated use by the state of sale proceeds received pursuant to the sales agreement shall be for the purposes set forth in this article;

(4) A requirement that the aggregate collective amount of net sale proceeds received by the state from the sale of the state’s share shall not be less than eight hundred million dollars;

(5) A requirement that the proceeds received by the state from the sale of the state’s share be applied by the state upon receipt to the Consolidated Public Retirement Board for deposit into the State Teachers Retirement System to redeem a portion of the unfunded actuarial accrued liability;

(6) A requirement that the state may receive from the authority, as the purchase price for the sale, any combination of cash, securities and direct or beneficial ownership interests in property, including, but not limited to, the allocable beneficial interest in the residual state’s share cash flows not needed to meet the bond debt service allocable to the state’s share purchased by the authority from the state, whether by an initial sale or sales of the authority’s bonds;

(7) A requirement that the cost of issuance excluding fees for bond insurance, credit enhancements, liquidity facilities and rating agency fees, plus underwriter’s discount and any other costs associated with the issuance shall not exceed, in
the aggregate, the sum of one percent of the aggregate principal amount of the bonds issued; and

(8) A requirement that the state will pledge to and agree with the holders of the authority’s bonds and with any person or entity that contracts with the authority in connection with the issuance of the bonds that the state will not alter, limit or impair: (i) The rights vested in the authority to receive the state’s share, to exercise its powers, or the ability to fulfill the terms of any contract entered into with the holders of the authority’s bonds or any person or entity with reference to the authority’s bonds; and (ii) the rights and remedies of the holders of any of the authority’s bonds. The state’s pledge and agreement shall continue in full force and effect until the authority’s legal commitments with respect to the authority’s bonds and contracts have been discharged in full.

(d) Any sale made under this section shall be irrevocable. Any sale shall constitute and be treated as a true and absolute sale and absolute transfer of the property transferred and not as a pledge or other security interest for any borrowing.

(e) On or after the effective date of any sale, the state shall not have any right, title or interest in the portion of the state’s share sold, and the portion of the state’s share sold shall be the property of the authority and not the state. None of the property sold by the state pursuant to this section shall be subject to garnishment, levy, execution, attachment or other process, or remedy in connection with the assertion or enforcement of any debt, claim, settlement or judgment against the state.

(f) On or before the effective date of any sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall irrevocably direct the escrow agent under the master settlement agreement that, subsequent
93 to that date, all payments constituting the state’s share or a
94 portion thereof shall be made directly to the authority or its
95 designee.


(a) The authority may issue bonds in more than one series
and, if bonds are issued, shall use the net proceeds to
purchase the state’s share pursuant to the sales agreement to
be applied as set forth in section twelve of this article. In
connection with the issuance of bonds and subject to the
terms of the sales agreement, the authority shall determine
the terms and other details of the financing. Bonds issued
pursuant to this section may be secured by a pledge of the
state’s share purchased by the authority. The authority may
also issue refunding bonds, including advance refunding
bonds, for the purpose of refunding previously issued bonds,
and may issue other types of bonds, notes or other debt
obligations and financing arrangements necessary to fulfill its
purposes or the purposes of this article.

(b) The authority may issue its bonds in principal
amounts which, in the opinion of the authority, are necessary
to provide sufficient funds for achievement of its purposes,
the payment of interest on its bonds, the establishment of
reserves to secure the bonds, the costs of issuance of its
bonds and all other expenditures of the authority incident to
and necessary to carry out its purposes or powers. The bonds
are investment securities and negotiable instruments within
the meaning of and for the purposes of article eight, chapter
forty-six of this code, subject only to the provisions of the
notes or bonds for registration, unless otherwise provided by
resolution of the authority.

(c) Bonds issued by the authority are payable solely and
only out of the moneys, assets or revenues pledged by the
authority and are not a general obligation or indebtedness of
the authority or an obligation or indebtedness of the state or
any subdivision of the state. The authority shall not pledge
the credit or taxing power of the state or any political
subdivision of the state, or create a debt or obligation of the
state, or make its debts payable out of any moneys except
those of the authority.

(d) Bonds of the authority shall state on their face that
they are payable both as to principal and interest solely out of
the assets of the authority pledged for their purpose and do
not constitute an indebtedness of the state or any political
subdivision of the state; are secured solely by and payable
solely from assets of the authority pledged for such purpose;
constitute neither a general, legal nor moral obligation of the
state or any of its political subdivisions; and that the state has
no obligation or intention to satisfy any deficiency or default
of any payment of the bonds.

(e) Any amount pledged by the authority to be received
under any sales agreement is valid and binding at the time the
pledge is made. Amounts pledged and then or thereafter
received by the authority are immediately subject to the lien
of the pledge without any physical delivery thereof or further
act. The lien of any pledge is valid and binding as against all
parties having claims of any kind against the authority
whether the parties have notice of the lien or not.
Notwithstanding any other provision of law, the pledge is not
subject to article nine, chapter forty-six of this code.
Notwithstanding any other provision to the contrary, the
resolution of the authority or any other instrument by which
a pledge is created need not be recorded or filed to perfect the
pledge.

(f) The proceeds of bonds issued by the authority may be
invested in any security or obligation approved by the board
and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary provided that any sales proceeds derived from tax exempt bonds are invested in a manner prescribed by the board so as to maintain the tax exempt status of the bonds.

(g) The exercise of the powers granted to the authority by this article will be in all respects an essential governmental function and for the benefit of the people of the state and is a public purpose. The authority, its property, income and all bonds and all interest and income thereon are exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof.

(h) Bonds of the authority shall comply with all of the following:

(1) The bonds may be issued in one or more series and shall be in a form, issued in denominations, carry such registration privileges and payable over terms and with rights of redemption as the board prescribes in the trust indenture or resolution authorizing their issuance;

(2) The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board; and

(3) The bonds are subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable, including, but not limited to, zero coupon bonds and capital appreciation bonds, during any period the bonds are outstanding, and other terms, conditions, covenants and protective provisions safeguarding payment as determined by
(i) The bonds issued under this article are securities in which insurance companies and associations and other persons engaged in the business of insurance; banks, trust companies, savings associations, savings and loan associations and investment companies; administrators, guardians, executors, trustees and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

(j) Bonds must be authorized by a resolution of the board. A resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds and of their sale by an appropriate certificate of the authorized officer or by execution and delivery of a trust indenture or bond purchase agreement. The bonds and notes shall be executed by the chairperson and secretary of the authority, both of whom may use facsimile signatures. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds or notes ceases to be an officer before delivery of the bonds or notes, the signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until the delivery.

(k) The authority may issue one or more series of bonds at any time or times so that interest on the bonds may be or remain exempt from federal taxation or to comply with the purposes specified in this article: Provided, That the state shall covenant and agree to invest any funds received from the sales agreement which were derived from tax exempt
bonds issued by the authority in a manner prescribed from the
authority.

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(1) In connection with the issuance of any bonds
authorized and issued pursuant to this section, and in addition
to the funds and accounts established elsewhere in this
article, the board may, under the trust indenture or resolution
pursuant to which the bonds are issued, establish any other
accounts, subaccounts or reserves determined necessary by
the board.

(m) While bonds of the authority are outstanding, the
state shall not agree to any amendment of the master
settlement agreement, the qualifying statute, the
complementary legislation, this article or the sales agreement
that materially and adversely affects the authority’s ability or
rights to receive the state’s share that has been sold to the
authority or the authority’s rights and powers under this
article and the sales agreement. The provision of this section
shall be part of the contractual obligation owed to the holders
of the authority’s bonds.

§4-11A-14. Exemption from purchasing provisions.

The provisions of article three, chapter five-a of this code
shall not apply to the authority with respect to contracts
entered into by the authority in carrying out the public and
essential governmental functions set forth in this article and
are exempt from the laws of the state which provide for
competitive bids and hearings in connection with contracts
and for review as to the form of contracts by the office of the
Attorney General of the state.

Notwithstanding any other provision of law, the authority is not authorized, and no governmental officer or organization shall authorize the authority to become a debtor in a case under the United States bankruptcy code, Title 11 of the United States Code, to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding. The provisions of this section shall be part of any contractual obligation owed to holders of any bonds issued pursuant to this article and shall not be modified by the state prior to the date which is three hundred sixty-six days after which the authority no longer has any bonds outstanding.

§4-11A-16. Dissolution of the authority; distribution of assets.

The authority shall dissolve not sooner than three hundred sixty-six days after it no longer has any bonds outstanding and no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this article. Upon dissolution of the authority, all assets of the authority shall be transferred to the state, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title or ownership to the state for receipt of payments under the master settlement agreement. In no event shall the authority dissolve while any bonds of the authority are outstanding.
§4-11A-17. Construction.

This article, being considered necessary for the welfare of the state and its people, shall be liberally construed to affect its purpose.

§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.

(a) There is hereby dedicated an annual amount of fifty million four hundred thousand dollars from annual collections of the tax imposed by article twenty-one, chapter eleven of this code as a portion of the revenue source dedicated to satisfy the Old Fund liabilities as they occur to provide a dollar for dollar replacement of the first thirty million dollars received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement as previously dedicated to the Old Fund prior to the sale of state’s share to the Tobacco Settlement Finance Authority. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning immediately after the sale of the state’s share to the Tobacco Settlement Finance Authority, fifty million four hundred thousand dollars from collections of the tax imposed by article twenty-one, chapter eleven of this code shall be deposited each calendar year to the credit of the Old Fund created in article two-d, chapter twenty-three of this code in accordance with the following schedule. Each
calendar month, except for July, August and September each year, five million six hundred thousand dollars shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. The transfers pursuant to this section are in addition to the transfers pursuant to section ninety-six, article twenty-one, chapter eleven of this code.

(c) Expiration. -- The transfers required by this section shall continue to be made until the Governor certifies to the Legislature that an independent actuary study 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. No transfer pursuant to this section shall be made thereafter.

CHAPTER 252

(Com. Sub. for H.B. 2309 - By Mr. Speaker, Mr. Thompson, and Delegate Armstead)
[By Request of the Executive]

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2007.]
credit; modifying total amount of tourism development project tax credit available on or near reclaimed surface mining operation; setting certain deadlines; modifying total amount of tourism development project tax credit available during calendar years; creating a tourism development expansion project credit; implementing a one million five hundred thousand dollar tax credit maximum availability for tourism development expansion projects; authorizing the promulgation of rules to establish a tourism development expansion project application process; and establishing a termination date for action on applications for tourism development projects and validity of such projects not previously approved.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9 and §5B-2E-11 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 §5B-2E-7a, all to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.
§5B-2E-4. Additional powers and duties of the development office.
§5B-2E-5. Project application; evaluation standards; consulting services; preliminary and final approval of projects.
§5B-2E-6. Agreement between development office and approved company.
§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.
§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.
§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.
§5B-2E-11. Termination.
§5B-2E-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) "Agreement" means a tourism development agreement entered into, pursuant to section six of this article, between the development office and an approved company with respect to a project.

(2) "Approved company" means any eligible company approved by the development office pursuant to section five of this article seeking to undertake a project.

(3) "Approved costs" means:

(a) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of
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construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(b) Excluded costs. -- The term "approved costs" does not include any portion of the cost required to be paid for the acquisition, construction, equipping or installation of a project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code.

(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business or a tourism development expansion project, as certified by the State Tax Commissioner.
"Development office" means the West Virginia Development Office as provided in article two of this chapter.

"Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

"Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a project, whether owned or leased, within the state that meets the standards required by the development office. An eligible company may operate or intend to operate directly or indirectly through a lessee.

"Ineligible company" means any West Virginia pari-mutuel racing facility licensed to operate multiple video lottery machines as authorized by article twenty-two-a, chapter twenty-nine of this code or any limited lottery retailer holding a valid license issued under article seven, chapter sixty of this code.

"Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved project, or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert
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halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(10) "Final approval" means the action taken by the executive director of the development office qualifying the eligible company to receive the tax credits provided in this article.

(11) "Preliminary approval" means the action taken by the executive director of the development office conditioning final approval.

(12) "Project" means a tourism development project and/or a tourism development expansion project administered in accordance with the provisions of this article.

(13) "State agency" means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(14) "Tourism attraction" means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center or an entertainment destination center. A project or tourism attraction does not include any of the following:

(A) Lodging facility, unless:
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(i) The facility constitutes a portion of a project and represents less than fifty percent of the total approved cost of the project, or the facility is to be located on recreational property owned or leased by the state or federal government and the facility has received prior approval from the appropriate state or federal agency;

(ii) The facility involves the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or is located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district and the rehabilitation or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facility involves the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) A facility that is primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a project where the sale of goods is a secondary and subordinate component of the project; and

(C) A recreational facility that does not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the project or existing attraction.

(15) "Tourism development project" means the acquisition, including the acquisition of real estate by a
leasehold interest with a minimum term of ten years, construction and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons, but does not include a project that will be substantially owned, managed or controlled by an eligible company with an existing project located within a ten mile radius, or by a person or persons related by a family relationship, including spouses, parents, children or siblings, to an owner of an eligible company with an existing project located within a ten mile radius.

(16) “Tourism development expansion project” means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years; the construction and installation of improvements to facilities necessary or desirable for the expansion of an existing tourism attraction including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-site construction of utility extension to the boundaries of real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.
(17) "Tourism development project tax credit" means the tourism development project tax credit allowed by section seven of this article.

(18) "Tourism development expansion project tax credit" means the tourism development expansion project tax credit allowed by section seven-a of this article.

§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make preliminary and final approvals of all applications for projects and enter into agreements pertaining to projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project; and

(3) Impose and collect fees and charges in connection with any transaction.

§5B-2E-5. Project application; evaluation standards; consulting services; preliminary and final approval of projects.

(a) Each eligible company that seeks to qualify a project for the tourism development project tax credit provided by section seven of this article, or for the tourism development
expansion project tax credit provided by section seven-a of this article, as applicable, must file a written application for approval of the project with the development office.

(b) With respect to each eligible company making an application to the development office for a tourism development project tax credit or a tourism development expansion project tax credit, the development office shall make inquiries and request documentation, including a completed application, from the applicant that shall include:
A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project. The executive director of the development office shall act to grant or not to grant any preliminary approval of an application within forty-five days following its receipt or receipt of additional information requested by the development office, whichever is later.

(c) Based upon a review of the application and additional documentation provided by the eligible company, if the executive director of the development office determines that the applicant and the project may reasonably satisfy the criteria for final approval set forth in subsection (d) of this section, then the executive director of the development office may grant a preliminary approval of the applicant and the project.

(d) After preliminary approval by the executive director of the development office, the development office shall engage the services of a competent consulting firm or firms to analyze the data made available by the applicant and to
collect and analyze additional information necessary to
determine that, in the independent judgment of the
consultant, the project:

(1) Likely will attract at least twenty-five percent of its
visitors from outside of this state;

(2) Will have approved costs in excess of one million
dollars;

(3) Will have a significant and positive economic impact
on the state considering, among other factors, the extent to
which the project will compete directly with or complement
existing tourism attractions in the state and the amount by
which increased tax revenues from the project will exceed the
credit given to the approved company;

(4) Will produce sufficient revenues and public demand
to be operating and open to the public for a minimum of one
hundred days per year; and

(5) Will provide additional employment opportunities in
the state.

(e) The applicant shall pay to the development office,
prior to the engagement of the services of a competent
consulting firm or firms pursuant to the provisions of
subsection (d) of this section, for the cost of the consulting
report or reports and shall cooperate with the consulting firm
or firms to provide all of the data that the consultant
considers necessary or convenient to make its determination
under subsection (d) of this section.

(f) The executive director of the development office,
within sixty days following receipt of the consultant's final,
written report or reports, shall review, in light of the
consultant's report or reports, the reasonableness of the
project's budget and timetable for completion and, in addition
to the criteria for final approval set forth in subsection (d) of
this section, the following criteria:

(1) The quality of the proposed project and how it
addresses economic problems in the area in which the project
will be located;

(2) Whether there is substantial and credible evidence
that the project is likely to be started and completed in a
timely fashion;

(3) Whether the project will, directly or indirectly,
improve the opportunities in the area where the project will
be located for the successful establishment or expansion of
other industrial or commercial businesses;

(4) Whether the project will, directly or indirectly, assist
in the creation of additional employment opportunities in the
area where the project will be located;

(5) Whether the project helps to diversify the local
economy;

(6) Whether the project is consistent with the goals of this
article;

(7) Whether the project is economically and fiscally
sound using recognized business standards of finance and
accounting; and

(8) The ability of the eligible company to carry out the
project.
92 (g) The development office may establish other criteria for consideration when approving the applications.

93 (h) The executive director of the development office may give its final approval to the applicant's application for a project and may grant to the applicant the status of an approved company. The executive director of the development office shall act to approve or not approve any application within sixty days following the receipt of the consultant's final, written report or reports or the receipt of any additional information requested by the development office, whichever is later. The decision by the executive director of the development office is final.

§5B-2E-6. Agreement between development office and approved company.

1 The development office, upon final approval of an application by the executive director, may enter into an agreement with any approved company with respect to its project. The terms and provisions of each agreement shall include, but not be limited to:

6 (1) The amount of approved costs of the project that qualify for a sales tax credit, as provided in section seven or section seven-a of this article, as applicable. Within three months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to the development office by an independent certified public accountant acceptable to the development office; and

14 (2) A date certain by which the approved company shall have completed and opened the project to the public. Any
approved company that has received final approval may request and the development office may grant an extension or change, however, in no event shall the extension exceed three years from the date of final approval to the completion date specified in the agreement with the approved company.

§5B-2E-7. Amount of credit allowed for tourism development project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development project: Provided, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: Provided, That, if the tourism development project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof
per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the ten-year period until the next succeeding taxable year. This election shall be made in the first consumers sales and service tax return filed by the approved company following the date the project is opened to the public. Once made, the election cannot be revoked.

(d) The amount determined under subsection (b) of this section is allowed as a credit against the consumers sales and service tax collected by the approved company on sales from the operation of the tourism development project. The amount determined under said subsection may be used as a credit against taxes required to be remitted on the approved company's monthly consumers sales and service tax returns that are filed pursuant to section sixteen, article fifteen, chapter eleven of this code. The approved company shall claim the credit by reducing the amount of consumers sales and service tax required to be remitted with its monthly consumers sales and service tax returns by the amount of its aggregate annual credit allowance until such time as the full current year annual credit allowance has been claimed. Once the total credit claimed for the tax year equals the approved company's aggregate annual credit allowance no further reductions to its monthly consumers sales and service tax returns will be permitted.

(e) If any credit remains after application of subsection (d) of this section, the amount of credit is carried forward to each ensuing tax year until used or until the expiration of the third taxable year subsequent to the end of the initial ten-year credit application period. If any unused credit remains after the thirteenth year, that amount is forfeited. No carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance.
§5B-2E-7a. Amount of credit allowed for tourism development expansion project; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development expansion project: Provided, That the tourism development expansion project tax credit allowed under this section is separate and distinct from any credit allowed for a tourism development project in accordance with the provisions of section seven of this article: Provided, however, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the tourism development expansion project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company's approved costs as provided in the agreement: Provided, That, if the tourism development expansion project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project, the maximum amount of credit allowable is equal to thirty-five percent of the approved company's approved costs as provided in the agreement.

(c) The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof
per taxable year, beginning with the taxable year in which the
project is opened to the public, unless the approved company
elects to delay the beginning of the ten-year period until the
next succeeding taxable year. This election shall be made in
the first consumers sales and service tax return filed by the
approved company following the date the project is opened
to the public. Once made, the election cannot be revoked.

(d) The amount determined under subsection (b) of this
section is allowed as a credit against the consumers sales and
service tax collected by the approved company on sales from
the operation of the tourism development expansion project.
The amount determined under said subsection may be used
as a credit against taxes required to be remitted on the
approved company's monthly consumers sales and service tax
returns that are filed pursuant to section sixteen, article
fifteen, chapter eleven of this code. The approved company
shall claim the credit by reducing the amount of consumers
sales and service tax required to be remitted with its monthly
consumers sales and service tax returns by the amount of its
aggregate annual credit allowance until such time as the full
current year annual credit allowance has been claimed. Once
the total credit claimed for the tax year equals the approved
company's aggregate annual credit allowance no further
reductions to its monthly consumers sales and service tax
returns will be permitted.

(e) If any credit remains after application of subsection
(d) of this section, the amount of credit is carried forward to
each ensuing tax year until used or until the expiration of the
third taxable year subsequent to the end of the initial ten-year
credit application period. If any unused credit remains after
the thirteenth year, that amount is forfeited. No carryback to
a prior taxable year is allowed for the amount of any unused
portion of any annual credit allowance.
(f) The total amount of tourism development expansion project tax credits for all approved companies pursuant to this section may not exceed one million five hundred thousand dollars each calendar year.

§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.

(a) The approved company shall forfeit the tourism development project tax credit allowed by section seven of this article, or the tourism development expansion tax credit allowed by section seven-a of this article, as applicable, with respect to any calendar year and shall pay the recapture tax imposed by subsection (b) of this section, if:

1. In any year following the first calendar year the project is open to the public, the project fails to attract at least twenty-five percent of its visitors from among persons who are not residents of the state;

2. In any year following the first year the project is open to the public, the project is not operating and open to the public for at least one hundred days; or

3. The approved company, as of the beginning of each calendar year, has an outstanding obligation to a Workers’ Compensation Fund, as defined in article two-c of chapter twenty-three of this code, an outstanding obligation under the West Virginia Unemployment Compensation Act, or an outstanding obligation under the West Virginia state tax and revenue laws.

(b) In addition to the loss of credit allowed under this article for the calendar year, any approved company or
successor eligible company that forfeits the tourism development project tax credit or the tourism development expansion project credit under the provisions of subsection (a) of this section, credit recapture shall apply and the approved company, and successor eligible companies, shall return to the state all previously claimed tourism development project tax credit or tourism development expansion project credit allowed by this article. An amended return shall be filed with the State Tax Commissioner for the prior calendar year, or calendar years, for which credit recapture is required, along with interest, as provided in section seventeen, article ten, chapter eleven of this code: Provided, That the approved company and successor eligible companies who previously claimed the tourism development project tax credit or the tourism development expansion project credit allowed by this article are jointly and severally liable for payment of any recapture tax subsequently imposed under this section.

(c) Within forty-five days after the end of each calendar year during the term of the agreement, the approved company shall supply the development office with all reports and certifications the development office requires demonstrating to the satisfaction of the development office that the approved company is in compliance with applicable provisions of law. Based upon a review of these materials and other documents that are available, the development office shall then certify to the Tax Commissioner that the approved company is in compliance with this section.

(d) The tax credit allowed in this article is transferable, subject to the written consent of the development office, to an eligible successor company that continues to operate the approved project.

1 The executive director of the development office may promulgate rules to implement the project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.

§5B-2E-11. Termination.

1 The development office may not accept any new project application after the thirty-first day of December, two thousand thirteen, and all applications submitted prior to the first day of January, two thousand thirteen, that have not been previously approved or not approved, shall be deemed not approved and shall be null and void as of the first day of January, two thousand thirteen.

CHAPTER 253

(Com. Sub. for S.B. 96 - By Senators Unger, Hunter and Jenkins)

[Passed February 26, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 13, 2007.]

AN ACT to amend and reenact §17C-15-26 of the Code of West Virginia, 1931, as amended, relating to authorizing fire department-owned apparatus to use yellow or amber flashing lights for safety.

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
(2) Except for standard vehicle equipment authorized by section nineteen of this article, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) 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;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights; and
(K) West Virginia Department of Agriculture emergency response vehicles.

Red flashing warning lights attached to a Class A vehicle shall be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services or chartered rescue squads.

(3) 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 of this chapter.

(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 or amber 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;
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(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(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.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in section twelve, article fourteen of this chapter.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 standard for automotive fire apparatus as published by the National Fire Protection Association (NFPA) on the
eighteenth day of July, two thousand three, and adopted by
the State Fire Commission by legislative rule (87 CSR 1, et
seq.), except as follows:

(i) With the approval of the State Fire Marshal, used
automotive fire apparatus may be conformed to the NFPA
standard in effect on the date of its manufacture or conformed
to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with
blinking or flashing headlamps.

(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.

(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.
CHAPTER 254

(H.B. 3272 - By Delegates Webster and Amores)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated § 44B-1-104a, relating to total return unitrusts.

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 § 44B-1-104a, to read as follows:

ARTICLE 1. DEFINITIONS AND FIDUCIARY DUTIES.

§44B-1-104a. Total return unitrust.

(a) As used in this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party", as defined in I. R. C. §672(c) et seq., with respect to the person then acting as trustee of the trust, and excludes the grantor of the trust and any interested trustee.

(2) "Income Trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to
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one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee, and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to one or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" as defined in I. R. C. §672(c) with respect to such distributee.

(4) "Interested trustee" means: (i) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed; (ii) any individual trustee who may be removed and replaced by an interested distributee; or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(5) "Total return unitrust" means an income trust, which has been converted under and meets the provisions of this section.

(6) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or at the direction of one or more persons acting in a fiduciary capacity.

(7) "Grantor" means an individual who created an inter vivos or a testamentary trust.

(8) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust.
UNITRUITS

(b) A trustee, other than an interested trustee, or where two or more persons are acting as trustee a majority of the trustees who are not an interested trustee, may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy; and

(2) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of this subdivision (2) were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) is legally competent.
UNITRUSTS

(A) Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(B) The notice of the proposed action shall state that it is given pursuant to this section and shall state all of the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(v) The date on or after which the proposed action may be taken or is effective.

(C) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(D) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not
liable to any current or future beneficiary with respect to the proposed action.

(c) If there is no trustee of the trust other than an interested trustee, the interested trustee or, where two or more persons are acting as trustee and are interested trustees, a majority of such interested trustees may, in its sole discretion and without judicial approval: (i) Convert an income trust to a total return unitrust; (ii) reconvert a total return unitrust to an income trust; or (iii) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if:

(1) The trustee adopts a written policy for the trust providing: (i) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income; (ii) in the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or (iii) that the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy;

(2) The trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee: (i) The percentage to be used to calculate the unitrust amount; (ii) the method to be used in determining the fair market value of the trust; and (iii) which assets, if any, are to be excluded in determining the unitrust amount;

(3) The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to: (i) The grantor of the trust, if living; (ii) all living persons who are currently receiving or eligible to receive distributions of income of the trust; (iii) all living persons
who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice, without regard to the exercise of any power of appointment, or, if the trust does not provide for its termination, all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the persons identified in clause (ii) of subdivision (2) of this section were deceased; and (iv) all persons acting as advisor or protector of the trust; and at least one person receiving notice under each of clauses (ii) and (iii) of subdivision (2) of this section is legally competent.

(A) Notice of the proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(B) The notice of the proposed action shall state that it is given pursuant to this section and shall state all of the following:

(i) The name and mailing address of the trustee;

(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(v) The date on or after which the proposed action may be taken or is effective.
(C) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(D) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(d) If any trustee desires to convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust or change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsections (b) or (c) of this section, the trustee may petition the circuit court of the county in which the trustee or beneficiary resides, or if the trustee is a corporate trustee and there is no resident beneficiary, the circuit court of the county where the trust account is administered, for such order as the trustee deems appropriate. In the event, however, there is only one trustee of the trust and the trustee is an interested trustee or in the event there are two or more trustees of the trust and a majority of them are interested trustees, the court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the court as shall be necessary to enable the court to make its determinations hereunder.
(e) The fair market value of the trust shall be determined at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using the valuation methods as are deemed reasonable and appropriate. Assets may be excluded from valuation, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event no less than three percent nor more than five percent, taking into account the intentions of the grantor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust and projected inflation and its impact on the trust.

(g) Following the conversion of an income trust to a total return unitrust, the trustee:

(1) Shall consider the unitrust amount as paid from net accounting income determined as if the trust were not a unitrust;

(2) Shall then consider the unitrust amount as paid from ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income described in I. R. C. §1222(9), 26 U. S. C. §1222(9), may consider the unitrust amount as paid from net short-term capital gain described in I. R. C. §1222(5), 26 U. S. C. §1222(5) and then from net long-term capital gain described in I. R. C. §1222(7), 26 U. S. C. §1222(7); and
(4) Shall then consider the unitrust amount as coming from the principal of the trust.

(h) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine: (i) The effective date of the conversion; (ii) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary’s right to payments commences or ceases; (iii) whether distributions are to be made in cash or in kind or partly in cash and partly in kind; (iv) if the trust is reconverted to an income trust, the effective date of such reconversion; and (v) such other administrative matters as may be necessary or appropriate to carry out the purposes of this section.

(i) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I. R. C. §2056 or §2523, 26 U. S. C. §2056 or §2523, the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during his or her lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under West Virginia law unless:
UNITRUSTS

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a trust described in I. R. C. §170(f)(2)(B) or I. R. C. §664 (d); or

(3) The governing instrument expressly prohibits use of this section by specific reference to this section or expressly reflects the grantor’s intent that net income not be calculated as a unitrust amount.

(1) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by the action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person’s exclusive remedy shall be to obtain an order of the court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(m) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than three nor more than five percent per year of the fair market value of the trust's assets, valued at least annually, the trust to be referred to in this section as an "express total return unitrust."

(1) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in one year or more than one year.
(2) Distribution of a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(3) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under this section, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under this section.

(4) If an express total return unitrust does not specifically or by reference to this section deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power.

(5) The distribution of a fixed percentage of not less than three percent nor more than five percent reasonably apportions the total return of an express total return unitrust.

(6) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(7) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(A) From net accounting income determined as if the trust were not a unitrust;
(B) From ordinary income not allocable to net accounting income;

(C) After calculating the trust's capital gain net income as described in Internal Revenue Code 26 U. S. C. §1, et seq. §1222(9), 26 U. S. C. §1222(9), from net realized short-term capital gain as described in I. R. C. §1222(5), 26 U. S. C. §1222(5) and then from net realized long-term capital gain described in I. R. C. §1222(7), 26 U. S. C. §1222(7); and

(D) From the principal of the trust.

(8) The trust instrument may provide that:

(A) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

(B) Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from the net fair market value for computing the unitrust amount.

CHAPTER 255

(S.B. 387 - By Senators Prezioso, Oliverio, Minard, Stollings, Kessler, Unger and Hunter)

[Passed March 6, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2007.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24F-1-3a, relating to the opportunity to install certain deceased veterans’ grave markers.
West Virginia Works Program

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24F-1-3a, to read as follows:

ARTICLE 1. VETERANS’ GRAVE MARKERS.

§24F-1-3a. Setting of Department of Veterans’ Affairs’ grave markers by cemeteries and companies that set and install memorial monument markers.

1 All cemeteries, cemetery associations, cemetery companies and perpetual care cemetery companies, irrespective of how each may be defined in articles five, five-a and five-b, chapter thirty-five of this code, and companies that set and install memorial monument markers shall not deny a person or entity the opportunity for installation and maintenance of United States Department of Veterans’ Affairs’ grave markers at the graves of deceased United States armed forces veterans for the total charges authorized by section two of this article.

CHAPTER 256

(Com. Sub. for S.B. 518 - By Senators Prezioso, Hunter, Caruth, Hall, Plymale, Unger and Foster)

[Passed March 10, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections,
designated §9-9-21 and §9-9-22, all relating to bringing the West Virginia Works Program into compliance with federal law as required by the Deficit Reduction Act; providing for state funding of two- and four-year post-secondary education for West Virginia Works eligibility; and providing for state funding for two-parent families to remain eligible for West Virginia Works.

Be it enacted by the Legislature of West Virginia:

That §9-9-3, §9-9-6, §9-9-7, §9-9-8 and §9-9-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §9-9-21 and §9-9-22, all to read as follows:

ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.

§9-9-6. Program participation.
§9-9-7. Work requirements.
§9-9-21. West Virginia Works Separate State College Program; eligibility; special revenue account.


In addition to the rules for the construction of statutes in section ten, article two, chapter two of this code and the words and terms defined in section two, article one of this chapter, unless a different meaning appears from the context:

(a) "At-risk family" means a group of persons living in the same household, living below the federally designated poverty level, lacking the resources to become self-supporting and consisting of a dependent minor child or
children living with a parent, stepparent or caretaker-relative;
an "at-risk family" may include an unmarried minor parent
and his or her dependent child or children who live in an
adult-supervised setting;

(b) "Beneficiary" or "participant" means any parent, work
eligible individuals or caretaker-relative in an at-risk family
who receives cash assistance for himself or herself and
family members;

(c) "Caretaker-relative" means grandparents or other
nonparental caretakers not included in the assistance group or
receiving cash assistance directly;

(d) "Cash assistance" means temporary assistance for
needy families;

(e) "Challenge" means any fact, circumstance or situation
that prevents a person from becoming self-sufficient or from
seeking, obtaining or maintaining employment of any kind,
including physical or mental disabilities, lack of education,
testing, training, counseling, child care arrangements,
transportation, medical treatment or substance abuse
treatment;

(f) "Community or personal development" means
activities designed or intended to eliminate challenges to
participation in self-sufficiency activities. These activities are
to provide community benefit and enhance personal
responsibility, including, but not limited to, classes or
counseling for learning life skills or parenting, dependent
care, job readiness, volunteer work, participation in sheltered
workshops or substance abuse treatment;
(g) "Department" means the state Department of Health and Human Resources;

(h) "Education and training" means hours spent regularly attending and preparing for classes in any approved course of schooling or training;

(i) "Family assessments" means evaluation of the following: Work skills, prior work experience, employability, education and challenges to becoming self-sufficient such as mental health and physical health issues along with lack of transportation and child care;

(j) "Income" means money received by any member of an at-risk family which can be used at the discretion of the household to meet its basic needs: Provided, That income does not include:

1. Supplemental security income paid to any member or members of the at-risk family;

2. Earnings of minor children;

3. Payments received from earned income tax credit or tax refunds;

4. Earnings deposited in an individual development account approved by the department;

5. Any educational grant or scholarship income regardless of source; or
(6) Any moneys specifically excluded from countable income by federal law;

(k) "Minor child head of household" means an emancipated minor under the age of eighteen years;

(l) "Nonrecipient parent" means an adult or adults excluded or disqualified by federal or state law from receiving cash assistance;

(m) "Personal responsibility contract" means a written agreement entered into by the department and a beneficiary for purposes of participation in the West Virginia Works Program;

(n) "Secretary" means the secretary of the state Department of Health and Human Resources;

(o) "Subsidized employment" means employment with earnings provided by an employer who receives a subsidy from the department for the creation and maintenance of the employment position;

(p) "Support services" includes, but is not limited to, the following services: Child care; Medicaid; transportation assistance; information and referral; resource development services which includes assisting families to receive child support and supplemental security income; family support services which includes parenting, budgeting and family planning; relocation assistance; and mentoring services;
(q) "Temporary assistance to needy families" is the federal program funded under Part A, Title IV of the Social Security Act, codified at 42 U. S. C. §601, et. seq.;

(r) "Transitional assistance" may include medical assistance, food stamp assistance, child care and supportive services as defined by the secretary and as funding permits;

(s) "Two-parent family" means two parents with a common child residing in the same household and included in a common West Virginia Works grant payment or, two parents with a common child residing in the same home and one or both of the parents are "work eligible individuals", as that term is defined in this section, but are excluded from the West Virginia Works payments unless the exclusion is due to an exemption as provided in section eight of this article.

(t) "Unsubsidized employment" means employment with earnings provided by an employer who does not receive a subsidy from the department for the creation and maintenance of the employment position;

(u) "Vocational educational training" means organized educational programs, not to exceed twelve months for any individual, that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate or advance degree;

(v) "Work" means unsubsidized employment, subsidized employment, work experience, community or personal development and education and training;
(w) "Work eligible individual" means an adult or minor child head-of-household receiving assistance under the West Virginia Works Program or a nonrecipient parent living with a child receiving the assistance; and

(x) "Work experience" means a publicly assisted work activity, including work associated with the refurbishing of publicly assisted housing, performed in return for program benefits that provide general skills, training, knowledge and work habits necessary to obtain employment. This activity must be supervised daily and on an ongoing basis by an employer, work site sponsor or other responsible party.

§9-9-6. Program participation.

(a) Unless otherwise noted in this article, all adult beneficiaries of cash assistance and work eligible individuals shall participate in the West Virginia Works Program in accordance with the provisions of this article. The level of participation, services to be delivered and work requirements shall be defined through legislative rules established by the secretary.

(b) Any individual exempt under the provisions of section eight of this article may participate in the activities and programs offered through the West Virginia Works Program.

(c) Support services other than cash assistance through the West Virginia Works Program may be provided to at-risk families to assist in meeting the work requirements or to eliminate the need for cash assistance.
(d) Cash assistance through the West Virginia Works Program may be provided to an at-risk family if the combined family income, as defined in section three of this article, is below the income test levels established by the department, subject to the following:

(1) Any adult member of an at-risk family who receives supplemental security income shall be excluded from the benefit group;

(2) Within the limits of funds appropriated therefor, an at-risk family that includes a married man and woman and dependent children of either one or both may receive an additional cash assistance benefit in an amount of one hundred dollars or less; and

(3) An at-risk family shall receive an additional cash assistance benefit in the amount of twenty-five dollars regardless of the amount of child support collected in a month on behalf of a child or children of the at-risk family, as allowed by federal law.

§9-9-7. Work requirements.

(a) Unless otherwise exempted by the provisions of section eight of this article, the West Virginia Works Program shall require that anyone who possesses a high school diploma, or its equivalent, or anyone who is of the age of twenty years or more, to work or attend an educational or training program for at least the minimum number of hours per week required by federal law under the work participation rate requirements for all families in order to receive any form of cash assistance. Participation in any education or training
activity, as defined in section three of this article, shall be counted toward satisfaction of the work requirement imposed by this section to the extent permissible under federal law and regulation: Provided, That the participant demonstrates adequate progress toward completion of the program. In accordance with federal law or regulation, the work, education and training requirements of this section are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services.

(b) The department and representatives of the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education shall develop and implement a plan to use and expand the programs available at the state’s community and technical colleges, colleges and universities to assist beneficiaries or participants who are enrolled or wish to become enrolled in vocational-educational training not to exceed twelve months with respect to any individual to meet the work requirements of this section. Vocational-educational training shall be supervised daily and on an ongoing basis.


1 The secretary shall establish by rule categories of persons exempt, but the exemption applies only to the work requirements of the program: Provided, That a person who is exempt from the work requirements may nevertheless participate voluntarily in work activities. The categories of exemptions are limited to the following:
(1) Undocumented aliens and aliens under the five-year ban;

(2) Parents, or at state option on a case-by-case basis, anyone receiving supplemental security income;

(3) A parent who is providing medically necessary care for a disabled family member who resides in the home and is not a full-time student;

(4) Minor parents who are not head of household (spouses of the head of household); and

(5) Grandparents and other nonparental caretakers.


(a) (1) Every eligible adult beneficiary and work eligible individual shall participate in a program orientation, family assessments and in the development, and subsequent revisions, of a personal responsibility contract. The contract shall be defined based on the program time limits, support services available, work requirements and family assessments.

(2) The participant's contract shall include the following requirements:

(A) That the participant develop and maintain, with the appropriate health care provider, a schedule of preventive care for his or her dependent child or children, including routine examinations and immunizations;
(B) Assurance of school attendance for school-age children under his or her care;

(C) Assurance of properly supervised child care, including after-school care;

(D) Establishment of paternity or active pursuit of child support, or both, if applicable and if considered necessary; and

(E) Nutrition or other counseling, parenting or family-planning classes.

(3) If the participant is a teenage parent, he or she may work, but the contract shall include the requirements that the participant:

(A) Remain in an educational activity to complete high school, obtain a general equivalency diploma or obtain vocational training and make satisfactory scholastic progress;

(B) Attend parenting classes or participate in a mentorship program, or both, if appropriate; and

(C) Live at home with his or her parent or guardian or in some other adult-supervised arrangements if he or she is an unemancipated minor.

(4) If the participant is under the age of twenty years and does not have a high school diploma or its equivalent, the contract shall include requirements to participate in mandatory education or training which, if the participant is
West Virginia Works Program

38 unemployed, may include a return to high school, with
39 satisfactory scholastic progress required.

40 (b) In order to receive cash assistance, the participant
41 shall enter into a personal responsibility contract. If the
42 participant refuses to sign the personal responsibility
43 contract, the participant and family members are ineligible to
44 receive cash assistance: Provided, That a participant who
45 alleges that the terms of a personal responsibility contract are
46 inappropriate based on his or her individual circumstances
47 may request and shall be provided a fair and impartial
48 hearing in accordance with administrative procedures
49 established by the department and due process of law. A
50 participant who signs a personal responsibility contract or
51 complies with a personal responsibility contract does not
52 waive his or her right to request and receive a hearing under
53 this subsection.

54 (c) Personal responsibility contracts shall be drafted by
55 the department on a case-by-case basis; take into
56 consideration the individual circumstances of each
57 beneficiary; reviewed and reevaluated periodically, but not
58 less than on an annual basis; and, in the discretion of the
59 department, amended on a periodic basis.

§9-9-21. West Virginia Works Separate State College Program;
eligibility; special revenue account.

1 (a) There is established the West Virginia Works
2 Separate State College Program. The program shall provide
3 funding for participants who are enrolled in post-secondary
4 courses leading to a two- or four-year degree. There is
5 created within the State Treasury a special revenue account
to be known as the West Virginia Works Separate State College Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations 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. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible adults attending post-secondary courses leading to a two- or four-year degree and who are not participating in vocational education training, as that term is defined in this article, shall be enrolled in the West Virginia Works Separate State College Program. Participants in the program shall not be required to engage in more than ten hours per week of federally defined work activities. The work, education and training requirements of this article are waived for any qualifying participant with a child under six years of age if the participant is unable to obtain appropriate and available child care services. All other requirements of West Virginia Works apply to program administration for adults enrolled in the program.

(c) The Department of Health and Human Resources shall work with the Higher Education Policy Commission, as set forth in article one-b, chapter eighteen-b of this code, and the Council for Community and Technical College Education, as set forth in article two-b, chapter eighteen-b of this code, to develop and implement a plan to use and expend funds for the programs available at the state’s community and
technical colleges and colleges and universities to assist
participants who are enrolled, or wish to become enrolled, in
two- and four-year degree programs of post-secondary
education to meet the work requirements of this article.


(a) There is established the West Virginia Works Separate State Two-Parent Families Program. The program shall provide funding for participants who are a two-parent family as that term is defined in this article. There is created within the State Treasury a special revenue account to be known as the West Virginia Works Separate State Two-Parent Program Fund. Expenditures from the fund shall be for the purposes set forth in this section and are not authorized from collections but are to be made only in accordance with appropriations 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. Necessary expenditures include wage reimbursements to participating employers, temporary assistance to needy families, payments for support services, employment-related child care payments, transportation expenses and administrative costs directly associated with the operation of the program.

(b) All eligible two parent families, as that term is defined in this article, shall enroll in the West Virginia Works Separate State Two-Parent Families Program. All requirements of West Virginia Works shall apply to program administration for two-parent families enrolled in the program.
AN ACT to amend and reenact §23-1-1 and §23-1-1f of the Code of West Virginia, 1931, as amended; to amend and reenact §23-2-9 of said code; to amend and reenact §23-2C-3, §23-2C-8, §23-2C-15, §23-2C-18 and §23-2C-19 of said code; to amend said code by adding thereto a new section, designated §23-2C-18a; and to amend and reenact §23-5-9 of said code, all relating to the transition to a private workers’ compensation insurance system; expressing legislative intent; permitting the Insurance Commissioner to hire additional exempt employees; exempting the Insurance Commissioner from purchasing rules in some circumstances; changing requirements for approval of self-insured status and for reports from self-insured employers; making various technical changes necessitated by the transition to a private workers’ compensation insurance system; reducing frequency of certain payments from self-insured employers and private carriers; authorizing the Insurance Commissioner to assess self-insured employers for certain funds; making certain assessments against self-insured employers discretionary with the Insurance Commissioner; clarifying how disputes related to claims against the Uninsured Employer Fund are resolved; increasing time that employers must report certain changes in coverage to the Insurance Commissioner; authorizing the Insurance Commissioner to promulgate exempt legislative rules; revising rate-making process; defining terms; providing for the designation of a single rating organization; deleting
provisions regarding private carrier premium collection; requiring agencies to terminate or revoke licenses, permits or certifications of employers in default to the state; clarifying persons subject to certain liens; removing requirement that the record of proceedings before the office of judges include certain documents; requiring the implementation of any benefit or award granted by a decision of the Office of Judges, unless stayed by explicit order; placing limitations on scope of permitted stay; and regarding the handling of resulting overpayments.

Be it enacted by the Legislature of West Virginia:

That §23-1-1 and §23-1-1f of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §23-2-9 of said code be amended and reenacted; that §23-2C-3, §23-2C-8, §23-2C-15, §23-2C-18 and §23-2C-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-2C-18a; and that §23-5-9 of said code be amended and reenacted, all to read as follows:


1. Employers and Employees Subject to Chapter; Extraterritorial Coverage.

2C. Employers' Mutual Insurance Company.

5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Workers' Compensation Commission created; findings.

§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.

§23-1-1. Workers' Compensation Commission created; findings.

1 (a) The Legislature finds that a deficit exists in the Workers' Compensation Fund of such critical proportions that it constitutes an imminent threat to the immediate and
long-term solvency of the fund and constitutes a substantial
deterrent to the economic development of this state. The
Legislature further finds that addressing the workers'
compensation crisis requires the efforts of all persons and
terminating and resolution of the crisis is in the best
interest of the public. Modification to the rate system,
alteration of the benefit structure, improvement of current
management practices and changes in perception must be
merged into a unified effort to make the workers'
compensation system viable and solvent through the
mutualization of the system and the opening of the market to
private workers' compensation insurance carriers. It was and
remains the intent of the Legislature that the amendments to
this chapter enacted in the year two thousand three be applied
from the date upon which the enactment was made effective
by the Legislature. The Legislature finds that an emergency
exists as a result of the combined effect of this deficit, other
state budgetary deficits and liabilities and other grave social
and economic circumstances currently confronting the state
and that unless the changes provided by the enactment of the
amendments to this chapter, as well as other legislation
designed to address the problem are made effective
immediately, the fiscal stability of this state will suffer
irreparable harm. Accordingly, the Legislature finds that the
need of the citizens of this state for the protection of the State
Treasury and the solvency of the Workers' Compensation
Funds requires the limitations on any expectations that may
have arisen from prior enactments of this chapter.

(b) It is the further intent of the Legislature that this
chapter be interpreted so as to assure the quick and efficient
delivery of indemnity and medical benefits to injured workers
at a reasonable cost to the employers who are subject to the
provisions of this chapter. It is the specific intent of the
Legislature that workers' compensation cases shall be decided
on their merits and that a rule of "liberal construction" based	hon any "remedial" basis of workers' compensation legislation
shall not affect the weighing of evidence in resolving such
cases. The workers' compensation system in this state is
based on a mutual renunciation of common law rights and
defenses by employers and employees alike. Employees'
rights to sue for damages over and above medical and health
care benefits and wage loss benefits are to a certain degree
limited by the provisions of this chapter and employers' rights
to raise common law defenses, such as lack of negligence,
contributory negligence on the part of the employee, and
others, are curtailed as well. Accordingly, the Legislature
hereby declares that any remedial component of the workers'
compensation laws is not to cause the workers' compensation
laws to receive liberal construction that alters in any way the
proper weighing of evidence as required by section one-g,
article four of this chapter.

(c) The "Workers' Compensation Division of the Bureau
of Employment Programs" is, on or after the first day of
October, two thousand three, reestablished, reconstituted and
continued as the Workers' Compensation Commission, an
agency of the state. The purpose of the commission is to
ensure the fair, efficient and financially stable administration
of the workers' compensation system of the State of West
Virginia. The powers and duties heretofore imposed upon
the Workers' Compensation Division and the Commissioner
of the Bureau of Employment Programs as they relate to
workers' compensation are hereby transferred to and imposed
upon the Workers' Compensation Commission and its
executive director in the manner prescribed by this chapter.
It is the intent of the Legislature that the transfer of
the administration of the workers’ compensation system of
this state from the Workers’ Compensation Division under
the Commissioner of the Bureau of Employment Programs to
the Workers’ Compensation Commission under its executive
director and the workers’ compensation board of managers is
to become effective the first day of October, two thousand
three. Any provisions of the enactment of Enrolled Senate
Bill No. 2013 in the year two thousand three relating to the
transfer of the administration of the workers’ compensation
system of this state that conflict with the intent of the
Legislature as described in this subsection shall, to that
extent, become operative on the first day of October, two
thousand three, and until that date, prior enactments of this
code in effect on the effective date of Enrolled Senate Bill
No. 2013 relating to the administration of the workers’
compensation system of this state, whether amended and
reenacted or repealed by the passage of Enrolled Senate Bill
No. 2013, have full force and effect. All provisions of the
enactment of Enrolled Senate Bill No. 2013 in the year two
thousand three relating to matters other than the transfer of
the administration of the workers’ compensation system of
this state shall become operative on the effective date of that
enactment, unless otherwise specifically provided in that
enactment.

It is the intent of the Legislature, expressed through its
enactment of legislation, to transfer the regulation of the
workers’ compensation system to the Insurance
Commissioner. By proclamation of the Governor, as
authorized by article two-c of this chapter, the Workers’
Compensation Commission was terminated on the thirty-first
day of December, 2005. To further the transition from the
state-operated workers’ compensation system to a system of private insurance, the duties and responsibilities of the Workers’ Compensation Commission and the board of managers, including, but not limited to, ratemaking and adjudication of claims now reside with the Insurance Commissioner.

§23-1-1f. Authority of Insurance Commission to exempt employees from classified service; exemption from purchasing rules.

Notwithstanding any other provision of this code, upon termination of the commission, the Insurance Commissioner may:

(1) Exempt no more than twenty positions of the offices of the Insurance Commissioner from the classified service of the state, the employees of which positions shall serve at the will and pleasure of the commissioner: Provided, That such exempt positions shall be in addition to those positions in classified-exempt service under the classification plan adopted by the Division of Personnel. The Insurance Commissioner shall report all exemptions made under this section to the Director of the Division of Personnel no later than the first day of July, two thousand seven, and thereafter as the commissioner determines to be necessary; and

(2) Expend such sums for professional services as he or she determines are necessary to perform those duties transferred to the Insurance Commissioner upon the termination of the commission. The provisions of article three, chapter five-a of this code relating to the Purchasing Division of the Department of Administration shall not apply.
21 to these contracts, and the Insurance Commissioner shall 22 award the contract or contracts on a competitive basis.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; self administration; rules; penalties; regulation of self-insurers.

1 (a) Notwithstanding any provisions of this chapter to the contrary, the following types of employers or employers' groups may apply for permission to self-insure their workers' compensation risk.

5 (1) The types of employers are:

6 (A) Any employer who is of sufficient capability and financial responsibility to ensure the payment to injured employees and the dependents of fatally injured employees of benefits provided for in this chapter at least equal in value to the compensation provided for in this chapter;

11 (B) Any employer or group of employers as provided in paragraph (A) of this subdivision of such capability and financial responsibility that maintains its own benefit fund or system of compensation to which its employees are not required or permitted to contribute and whose benefits are at least equal in value to those provided in this chapter; or
(C) Any employer who is signatory to a collective bargaining agreement that allows for participation in a group workers' compensation insurance program may join with any other employer or employers that are signatory to a collective bargaining agreement or agreements that allow for participation in a group workers' compensation program and jointly apply to the Insurance Commissioner to collectively self-insure their obligations under this chapter. The employers must collectively meet the conditions set forth in paragraph (A) or (B) of this subdivision. There shall be joint and several liability for all employers who choose to jointly self-insure under the provisions of this article.

(2) In order to be approved for self-insurance status, the employer shall:

(A) Submit all information requested by the Insurance Commissioner;

(B) Provide security or bond, in an amount and form determined by the Insurance Commissioner, which shall balance the employer's financial condition based upon an analysis of its audited financial statements and the full accrued value of current liability for future claim payments based upon generally accepted actuarial and accounting principles of the employer's existing and expected liability;

(C) Meet the financial responsibility requirements set forth in rules promulgated by the board of managers or industrial council;

(D) Obtain and maintain a policy of excess insurance if required to do so by the Insurance Commissioner; and
(E) Have an effective health and safety program at its workplaces.

(3) Upon a finding that the employer has met all of the requirements of this section and any rules promulgated thereunder, the employer may be permitted self-insurance status. An annual review of each self-insurer's continuing ability to meet its obligations and the requirements of this section shall be made by the Insurance Commissioner. At the time of such review, the Insurance Commissioner may require that the self-insured employer post a bond or security or obtain and maintain an excess insurance policy. This review shall also include a recalculation of the amount of any security, bond or policy of excess insurance previously required to be posted or obtained under any provision of this chapter or any rules promulgated thereunder. Failure to provide the required amount or form of security or bond or to obtain or maintain the required excess insurance policy may cause the employer's self-insurance status to be terminated by the Insurance Commissioner.

(4) Whenever a self-insured employer furnishes security or bond, including replacement and amended bonds and other securities, as surety to ensure the employer's or guarantor's payment of all obligations under this chapter for which the security or bond was furnished, the security or bond shall be in the most current form or forms approved and authorized by the commission or Insurance Commissioner for use by the employer or its guarantors, surety companies, banks, financial institutions or others in its behalf for that purpose.

(b) (1) Notwithstanding any provision in this chapter to the contrary, self-insured employers shall, effective the first
day of July, two thousand four, administer their own claims. The Insurance Commissioner shall, pursuant to rules promulgated by the board of managers or industrial council, regulate the administration of claims by employers granted permission to self-insure their obligations under this chapter. A self-insured employer shall comply with rules promulgated by the board of managers or industrial council governing the self-administration of its claims.

(2) An employer or employers' group that self-insures its risk and self-administers its claims shall exercise all authority and responsibility granted to the Insurance Commissioner or private carriers 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. An employer or employers' group granted permission to self-insure and self-administer its obligations under this chapter shall at all times be bound and shall comply fully with all of the provisions of this chapter. Furthermore, all of the provisions contained in article four of this chapter pertaining to disability and death benefits are binding on and shall be strictly adhered to by the self-insured employer in its administration of claims presented by employees of the self-insured employer. Violations of the provisions of this chapter and such rules relating to this chapter as may be approved by the board of managers or industrial council may constitute sufficient grounds for the termination of the authority for any employer to self-insure its obligations under this chapter.

(c) Each self-insured employer shall, on or before the last day of the first month of each quarter or other assigned reporting period, file with the Insurance Commissioner a
certified statement of the total gross wages and earnings of all of the employer's employees subject to this chapter for the preceding quarter or other assigned reporting period.

(d) (1) If a self-insured employer defaults in the payment of any portion of surcharges or assessments required under this chapter or rules promulgated thereunder, or in any payment required to be made as benefits provided by this chapter to the employer's injured employees or dependants of fatally injured employees, the Insurance Commissioner shall, in an appropriate case, determine the full accrued value based upon generally accepted actuarial and accounting principles of the employer's liability, including the costs of all awarded claims and of all incurred but not reported claims. The amount determined may, in an appropriate case, be assessed against the employer. The Insurance Commissioner may demand and collect the present value of the defaulted liability. Interest shall accrue upon the demanded amount as provided in section thirteen of this article until the liability is fully paid. Payment of all amounts then due to the Insurance Commissioner and to the employer's employees is a sufficient basis for reinstating the employer to good standing with Insurance Commissioner and removing the employer from default status.

(2) The assessments and surcharges required to be paid by self-insured employers pursuant to the provisions of this chapter and the rules promulgated thereunder are special revenue taxes under and according to the provisions of state workers' compensation law and are considered to be tax claims, as priority claims or administrative expense claims according to those provisions under the law provided in the United States bankruptcy code, Title 11 of the United States
Code. In addition, as the same was previously intended by the prior provisions of this section, this amendment and reenactment is for the purpose of clarification of the taxing authority of the Insurance Commissioner.

(e) The commission may create, implement, establish and administer a perpetual self-insurance security risk pool of funds, sureties, securities, insurance provided by private insurance carriers or other states' programs, and other property, of both real and personal properties, to secure the payment of obligations of self-insured employers. If a pool is created, the board of managers shall adopt rules for the organizational plan, participation, contributions and other payments which may be required of self-insured employers under this section. The board of managers may adopt a rule authorizing the commission to assess each self-insured employer in proportion according to each employer's portion of the unsecured obligation and liability or to assess according to some other method provided by rule which shall properly create and fund the risk pool to serve the needs of employees, employers and the Workers' Compensation Fund by providing adequate security. The board of managers establishing a security risk pool may authorize the executive director to use any assessments, premium taxes and revenues and appropriations as may be made available to the commission. Effective upon termination of the commission, all statutory and regulatory authority provided to the commission and board of managers over pools created pursuant to this section, as such pools are defined in section two, article two-c of this chapter, shall transfer to the Insurance Commissioner.
(f) Any self-insured employer which has had a period of inactivity due to the nonemployment of employees which results in its reporting of no wages on reports to the Insurance Commissioner for a period of four or more consecutive quarters may have its status inactivated and shall apply for reactivation to status as a self-insured employer prior to its reemployment of employees. Despite the inactivation, the self-insured employer shall continue to make payments on all awards for which it is responsible. Upon application for reactivation of its status as an operating self-insured employer, the employer shall document that it meets the eligibility requirements needed to maintain self-insured employer status under this section and any rules adopted to implement it. If the employer is unable to requalify and obtain approval for reactivation, the employer shall, effective with the date of employment of any employee, purchase workers' compensation insurance as provided in article two-c of this chapter, but shall continue to be a self-insurer as to the prior period of active status and to furnish security or bond and meet its prior self-insurance obligations.

(g) In any case under the provisions of this section that requires the payment of compensation or benefits by an employer in periodical payments and the nature of the case makes it possible to compute the present value of all future payments, the commission may, in its discretion, at any time compute and permit to be paid into the Workers' Compensation Fund an amount equal to the present value of all unpaid future payments on the award or awards for which liability exists in trust. Thereafter, the employer shall be discharged from any further portion of premium tax liability upon the award or awards and payment of the award or awards shall be assumed by the commission. Upon
termination of the commission, the process herein described will no longer be permitted. Self-insured employers may thereafter withdraw from self-insured status and purchase workers' compensation insurance as provided in article two-c of this chapter, but said self-insured employers shall remain liable for their self-insured employer claims liabilities for each claim with a date of injury or last exposure prior to the effective date of insurance coverage.

(h) Any employer subject to this chapter, who elects to carry the employer's own risk by being a self-insured employer and who has complied with the requirements of this section and of any applicable rules, shall not be liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after the election's approval and during the period that the employer is allowed to carry the employer's own risk.

(i) An employer may not hire any person or group to self-administer claims under this chapter as a third-party administrator unless the person or group has been determined to be qualified to be a third-party administrator by the Insurance Commissioner pursuant to rules adopted by the board of managers or industrial council. Any person or group whose status as a third-party administrator has been revoked, suspended or terminated by the Insurance Commissioner shall immediately cease administration of claims and shall not administer claims unless subsequently authorized by the Insurance Commissioner.

(j) All regulatory, oversight and document-gathering authority provided to the commission under this section shall
transfer to the Insurance Commissioner and the industrial council upon termination of the commission.

**ARTICLE 2C. EMPLOYERS’ MUTUAL INSURANCE COMPANY.**


§23-2C-18a. Designation of rating organization.

§23-2C-19. Premium payment; employer default; special provisions as to employer default collection.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia Workers' Compensation Commission.

(a) On or before the first day of June, two thousand five, the executive director may take such actions as are necessary to establish an employers' mutual insurance company as a domestic, private, nonstock, corporation to:

(1) Insure employers against liability for injuries and occupational diseases for which their employees may be entitled to receive compensation pursuant to chapter twenty-three of this code and federal Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §901, et seq.;

(2) Provide employer's liability insurance incidental to and provided in connection with the insurance specified in subdivision (1) of this subdivision, including coal-workers’ pneumoconiosis coverage and employer excess liability coverage as provided in this chapter; and
(3) Transact such other kinds of property and casualty insurance for which the company is otherwise qualified under the provisions of this code.

(4) The company shall not sell, assign or transfer substantial assets or ownership of the company.

(b) If the executive director establishes a domestic mutual insurance company pursuant to subsection (a) of this section:

(1) As soon as practical, the company established pursuant to the provisions of this article shall, through a vote of a majority of its provisional board, file its corporate charter and 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.

(2) In recognition of the workers' compensation insurance liability insurance crisis in this state at the time of enactment of this article and the critical need to expedite the initial operation of the company, the Legislature hereby authorizes the Insurance Commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of section five-b, article three, chapter thirty-three of this code. The company shall furnish the Insurance Commissioner with all information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code.
The Insurance Commissioner shall monitor the economic viability of the company during its initial operation on not less than a monthly basis, until such time as the commissioner, in his or her discretion, determines that monthly reporting is not necessary. In all other respects the company shall be subject to comply with the applicable provisions of chapter thirty-three of this code.

(3) Subject to the provisions of subdivision (4) of this subsection, the Insurance Commissioner may waive other requirements imposed on mutual insurance companies by the provisions of chapter thirty-three of this code as the Insurance Commissioner determines is necessary to enable the company to begin insuring employers in this state at the earliest possible date.

(4) Within forty months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in subsection (a), section five-b, article three, chapter thirty-three of this code in effect on the effective date of this enactment, unless said deadline is extended by the Insurance Commissioner.

(c) For the duration of its existence, the company is not and shall not be considered a department, unit, agency or instrumentality of the state for any purpose. All debts, claims, obligations and liabilities of the company, whenever incurred, shall be the debts, claims, obligations and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer or employee of the state.
(d) The moneys of the company are not and shall not be considered part of the General Revenue Fund of the state. The debts, claims, obligations and liabilities of the company are not and shall not be considered a debt of the state or a pledge of the credit of the state.

(e) The company is not subject to provisions of article nine-a, chapter six of this code; the provisions of chapter twenty-nine-b of this code; the provisions of article three, chapter five-a of this code; the provisions of article six, chapter twenty-nine of this code; the provisions of article six-a of said chapter; or the provisions of chapter twelve of this code.

(f) If the commission has been terminated, effective upon said termination, private carriers, including the company, shall not be subject to payment of premium taxes, surcharges and credits contained in article three, chapter thirty-three of this code on premiums received for coverage under this chapter. In lieu thereof, the workers' compensation insurance market shall be subject to the following:

(1) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be collected by each private carrier from its policyholders. The surcharge percentage shall be calculated by dividing the previous fiscal year's total premiums collected plus deductible payments by all employers into the portion of the Insurance Commissioner's budget amount attributable to regulation of the private carrier market. This resulting percentage shall be applied to each policyholder's premium payment and deductible payments as a surcharge and remitted to the
Insurance Commissioner. Said surcharge shall be remitted within ninety (90) days of receipt of premium payments;

(2) Each fiscal year, the Insurance Commissioner shall calculate a percentage surcharge to be remitted on a quarterly basis by self-insured employers and said percentage shall be calculated by dividing previous year's self-insured payroll in the state into the portion of the Insurance Commissioner's budget amount attributable to regulation of the self-insured employer market. This resulting percentage shall be applied to each self-insured employer's payroll and the resulting amount shall be remitted as a regulatory surcharge by each self-insured employer. The Workers' Compensation Board of Managers or industrial council may promulgate a rule for implementation of this section. The company, all other private carriers and all self-insured employers shall furnish the Insurance Commissioner with all required information and cooperate in all respects necessary for the Insurance Commissioner to perform the duties set forth in this section and in other provisions of this chapter and chapter thirty-three of this code. The surcharge shall be calculated so as to only defray the costs associated with the administration of this chapter and the funds raised shall not be used for any other purpose;

(3) Upon termination of the commission, the company and all other private carriers shall collect a premiums surcharge from their policyholders equal to ten percent, or such higher or lower rate as annually determined, by the first day of May of each year, by the Insurance Commissioner to produce forty-five million dollars annually, of each policyholder's periodic premium amount for workers' compensation insurance. Additionally, by the first day of
May each year, the self-insured employer community shall be assessed a cumulative total of nine million dollars. The methodology for the assessment shall be fair and equitable and determined by exempt legislative rule issued by the workers' compensation board of managers or industrial council. The amount collected shall be remitted to the Insurance Commissioner for deposit in the Workers' Compensation Debt Reduction Fund created in section five, article two-d of this chapter.

(g) The new premiums surcharge imposed by subdivision (3), subsection (f) of this section 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 certifies to the Legislature that the revenue bonds issued pursuant to article two-d, chapter twenty-three of this code 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.


(a) The Workers’ Compensation 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) **Assessments.** -- The Insurance Commissioner shall assess each private carrier and may assess self-insured employers an amount to be deposited in the fund. The assessment may be collected by each private carrier from its policyholders 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 each of the groups subject to the assessment. After allocating the amounts payable by each group, 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, if assessed, 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 groups assessed 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 or industrial council may adopt rules for the establishment and administration of the assessment methodologies, rates, payments and any penalties that it determines are necessary to carry out the provisions of this section.
(b) Payments from the fund. --

(1) Except as otherwise provided in this subsection, an injured employee 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 such employee meets all jurisdictional and entitlement provisions of this chapter, files a claim with the Insurance Commissioner and makes an irrevocable assignment to the Insurance Commissioner of a right to be subrogated to the rights of the injured employee.

(2) Employees who are injured while employed by a self-insured employer are ineligible for benefits from the Workers’ Compensation Uninsured Employer Fund.

(c) Initial determination upon receipt of a claim. --

(1) If the Insurance Commissioner determines that the claimant’s employer maintained a policy of workers’ compensation insurance pursuant to this chapter on the date of injury or last exposure or that the employer was not required to maintain such a policy on such date, then the claim shall not be accepted into the fund; if the commissioner determines that the employer was required to maintain such a policy but failed to do so, the claim will be accepted into the fund and the Insurance Commissioner may assign such a claim to the third-party administrator of the fund for administration.

(2) The Insurance Commissioner shall notify the injured employee and the named employer of the determination made pursuant to subdivision (1) of this subsection and any party
65 aggrieved thereby shall be entitled to protest such
66 determination in a hearing before the Insurance
67 Commissioner: Provided, That in any such proceeding, the
68 employer has the burden of proving that it either provided
69 mandatory workers' compensation insurance coverage or that
70 it was not required to maintain workers' compensation
71 insurance.

72 (d) Employer liability. --

73 (1) Any employer who has failed to provide mandatory
74 coverage required by the provisions of this chapter is liable
75 for all payments made and to be made on its behalf, including
76 any benefits, administrative costs and attorney's fees paid
77 from the fund or incurred by the Insurance Commissioner,
78 plus interest calculated in accordance with the provisions of
79 section thirteen, article two of this chapter.

80 (2) The Insurance Commissioner:

81 (A) May bring a civil action in a court of competent
82 jurisdiction to recover from the employer the amounts set
83 forth in subdivision (1) of this subsection. In any such
84 action, the Insurance Commissioner may also recover the
85 present value of the estimated future payments to be made on
86 the employer’s behalf and the costs and attorney’s fees
87 attributable to such claim: Provided, That the failure of the
88 Insurance Commissioner to include a claim for future
89 payments shall not preclude one or more subsequent actions
90 for such amounts;

91 (B) May enter into a contract with any person, including
92 the third-party administrator of the uninsured employer fund,
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93 to assist in the collection of any liability of an uninsured employer; and

95 (C) In lieu of a civil action, may enter into an agreement or settlement regarding the collection of any liability of an uninsured employer.

98 (3) In addition to any other liabilities provided in this section, the Insurance Commissioner may impose an administrative penalty of not more than ten thousand dollars against an employer if the employer fails to provide mandatory coverage required by this chapter. All penalties and other moneys collected pursuant to this section shall be deposited into the Workers’ Compensation Uninsured Employer Fund.

(e) Protests to claims decisions. -- Any party aggrieved by a claims decision made by the Insurance Commissioner or the third-party administrator in a claim that has been accepted into the fund may object to that decision by filing a protest with the office of judges as set forth in article five of this chapter.


(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.

(c) Every employer shall post a notice upon its premises in a conspicuous place identifying its workers' compensation 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 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 policyholders, and each private carrier shall provide
said information to the Insurance Commissioner within sixty
days of the issuance of a policy and any changes to the
information shall thereafter be reported within sixty days of
such change.

(d) Any rule promulgated by the board of managers or
industrial council 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 regard to any liability under this
chapter shall be fully enforceable by the Insurance
Commissioner against any such employer.

(e) 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.
(f) Every private carrier shall notify the Insurance Commissioner or his or her designee of: (i) The issuance or renewal of insurance coverage, within ten calendar days of the effective date of coverage; and (ii) a termination of coverage due to lapse, refusal to renew or cancellation, within three business days of the effective date of the termination; such notifications shall be on forms developed by the Insurance Commissioner.


(a) (1) The rate-making provisions and premium provisions contained in article two of this chapter shall not be applicable to the company or other private carriers. Rates for workers’ compensation insurance are subject to the provisions of this section, section eighteen-a of this article and article twenty, chapter thirty-three of this code.

(2) In the event of any conflict, the provisions of this article shall have paramount effect, but the provisions in this chapter and chapter thirty-three of this code shall be construed as complementary and harmonious unless so clearly in conflict that they cannot reasonably be reconciled.

(b) An insurer shall file its rates by filing a multiplier or multipliers to be applied to prospective loss costs that have been filed by the designated advisory organization on behalf of the insurer in accordance with section eighteen-a of this article and may also file carrier specific rating plans.

(c) Rates must not be excessive, inadequate or unfairly discriminatory, nor may an insurer charge any rate which if
continued will have or tend to have the effect of destroying
competition or creating a monopoly.

(d) The Insurance Commissioner may disapprove rates if
there is not a reasonable degree of price competition at the
consumer level with respect to the class of business to which
they apply. In determining whether a reasonable degree of
price competition exists, the Insurance Commissioner shall
consider all relevant tests, including:

(1) The number of insurers actively engaged in the class
of business and their shares of the market;

(2) The existence of differentials in rates in that class of
business;

(3) Whether long-run profitability for private carriers
generally of the class of business is unreasonably high in
relation to its risk;

(4) Consumers' knowledge in regard to the market in
question; and

(5) Whether price competition is a result of the market or
is artificial. If competition does not exist, rates are excessive
if they are likely to produce a long-run profit that is
unreasonably high in relation to the risk of the class of
business, or if expenses are unreasonably high in relation to
the services rendered.

(e) Rates are inadequate if they are clearly insufficient,
together with the income from investments attributable to
them, to sustain projected losses and expenses in the class of
business to which they apply.
(f) One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with similar exposure to loss but different expense factors, or similar expense factors but different exposure to loss, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

§23-2C-18a. Designation of rating organization.

(a) For the purposes of this section:

(1) “Classification system” or “classification” means the plan, system or arrangement for grouping risks with similar characteristics or a specified class of risk by recognizing differences in exposure to hazards.

(2) “Experience rating” means a statistical procedure utilizing past risk experience to produce a prospective premium credit, debit or unity modification.

(3) “Prospective loss costs” means historical aggregate losses and loss adjustment expenses projected through development to their ultimate value and through trending to a future point in time. Prospective loss costs do not include provisions for profit or expenses other than loss adjustment expenses.
(4) “Statistical plan” means the plan, system or arrangement used in collecting data for ratemaking or other purposes.

(b) The Insurance Commissioner shall designate one rating organization to:

(1) Assist the commissioner in gathering, compiling and reporting relevant statistical information on an aggregate basis;

(2) Develop and administer, subject to approval by the commissioner, the uniform statistical plan, uniform classification plan and uniform experience rating plan;

(3) Develop and file manual rules, subject to the approval of the commissioner, that are reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification plan; and

(4) File with the commissioner for approval all prospective loss costs, provisions for special assessments, all supplementary rating information and any changes, amendments or modification of the forgoing proposed in this state.

(c) Each workers' compensation insurer shall:

(1) Record and report its workers' compensation experience to the designated rating organization as set forth in the uniform statistical plan approved by the commissioner; and
(2) Adhere to the uniform classification plan and uniform experience rating plan developed by the designated rating organization and approved by the commissioner.

(d) The commissioner may promulgate exempt legislative rules to implement the provisions of this section, including a rule providing for the equitable sharing and recovery of the expense of the designated rating organization in performing the functions set forth in subsection (b) of this section.

§23-2C-19. Premium payment; employer default; special provisions as to employer default collection.

(a) Each employer who is required to purchase and maintain workers' compensation insurance or who elects to purchase workers' compensation insurance shall pay a premium to a private carrier. Each carrier shall notify its policyholders of the mandated premium payment methodology and under what circumstances a policyholder will be found to be in policy default.

(b) An employer who is required to purchase and maintain workers' compensation insurance but fails to do so or otherwise enters policy default shall be deprived of the benefits and protection afforded by this chapter, including section six, article two of this chapter, and the employer is liable as provided in section eight of said article. The policy defaulted employer's liability under these sections is retroactive to the day the policy default occurs. The private carrier shall notify the policy defaulted employer of the method by which the employer may be reinstated with the private carrier.
(c) In addition to any other liabilities provided in this section, the Insurance Commissioner 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.

(d) The company and the Insurance Commissioner shall be provided extraordinary powers to collect any premium amounts payable to the workers' compensation fund or the new fund and due from the first day of July, two thousand five, through the thirtieth day of June, two thousand eight. Those powers shall include: (1) Withholding of coverage effective the first day of January, two thousand six. Employers without coverage shall immediately be deprived of the benefits and protection afforded by this chapter, including section six, article two of this chapter and the employer is liable as provided in section eight of said article; (2) the right to maintain a civil action against all officers and directors of the employer individually for collection of the premium owed; and (3) the right to immediately report the employers to the State Tax Department and other state agencies to secure suspension of any and all licenses, certificates, permits, registrations and other similar approval documents necessary for the employer to conduct business in this state.

(e) Every agency shall, upon notification of employer default by the Insurance Commissioner, immediately begin the process to revoke or terminate any contract, license, permit, certificate or other authority to conduct a trade, profession or business in this state and shall refuse to issue, grant or renew any such contract, license, permit, certificate or authority.
(1) The term “employer default” means having an outstanding balance or liability to the old fund or to the uninsured employers’ fund or being in policy default, as defined in section two of this article, or failure to maintain mandatory workers’ compensation coverage. An employer is not in default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

(2) The term “agency” includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations.

(f) Any amounts owed by an employer to the state as a result of an employer default is a personal liability of the employer, its officers, owners, partners and directors and is immediately due and owing and shall, in addition, be a lien enforceable against all the property of the employer, its officers, owners, partners and directors: Provided, That the lien shall not be enforceable as against a purchaser, including a lien creditor, of real estate or personal property for a valuable consideration without notice, unless docketed as provided in section one, article ten-c, chapter thirty-eight of this code: Provided, however, That the lien may be enforced as other judgment liens are enforced through the provisions of said chapter and the same is considered by the circuit court to be a judgment lien for this purpose.

(g) The Insurance Commissioner shall propose rules for adoption by the industrial council to effectuate the purposes of this section including the conditions under which agencies shall comply with the provisions of subsection (e) of this section and specifying how notice of default shall be given by the commissioner.
ARTICLE 5. REVIEW.

§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand.

(a) Objections to a decision of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, made pursuant to the provisions of section one of this article shall be filed with the office of judges. Upon receipt of an objection, the office of judges shall notify the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The office of judges shall establish by rule promulgated in accordance with the provisions of subsection (e), section eight of this article an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, private carrier or self-insured employer, whichever are applicable, shall be notified of any hearing at least ten days in advance. The office of judges shall review and amend, or modify, as necessary, its procedural rules by the first day of July, two thousand seven.

(b) The office of judges shall establish a program for mediation to be conducted in accordance with the requirements of rule twenty-five of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the office of judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.
(c) The office of judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to section eight of this article, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges and evidence taken at hearings conducted by the office of judges. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The office of judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to section eight of this article. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the office of judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The office of judges may remand a claim to the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, must report back to the administrative law judge.
(f) The decision of the office of judges regarding any objections to a decision of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable, is final and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by the Workers’ Compensation Board of Review created in section eleven of this article or by the administrative law judge who granted the benefits. No stay with respect to any medical treatment or rehabilitation authorized by the office of judges may be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of such reversal, any such overpayment may be recovered pursuant to the provisions of subsection (h), section one-c, article four of this chapter or subsection (d), section one-d of said article, as applicable.

CHAPTER 258

(S.B. 489 - By Senators McCabe, Kessler, Sprouse and Unger)

[Passed March 6, 2007; in effect ninety days from passage.]
[Approved by the Governor on April 3, 2007.]

AN ACT to amend and reenact §5B-2B-4 and §5B-2B-6 of the Code of West Virginia, 1931, as amended, all relating to reports to the Legislative Oversight Commission on Workforce Investment for Economic Development and the Legislative Oversight Commission on Education Accountability generally; requiring a yearly report on the status and any memoranda of understanding which have
been entered into for West Virginia one-stop system operations; and requiring a yearly report on the success of efforts to link PROMISE scholarship graduates to West Virginia employment opportunities.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-4 and §5B-2B-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.


1 (a) The council shall assist the Governor in the:

2 (1) Development and revision of a strategic five-year state workforce investment plan, including the establishment of an overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards;

7 (2) Development and continuous improvement of a statewide system of workforce investment activities including:

10 (A) Development of linkages in order to assure coordination and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and
(B) The review of strategic plans created and submitted by local workforce investment boards;

(3) Commenting at least annually on the measures taken by the state pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U. S. C. §2323;

(4) Designation and revision of local workforce investment areas;

(5) Development and revision of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas;

(6) Development and continuous improvement of comprehensive state performance measures, including state-adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state;

(7) Preparation of the annual report to the Secretary of Labor as required by the Workforce Investment Act, 29 U. S. C. §2871;

(8) Development and continued improvement of a statewide employment statistics system; and

(9) Development and revision of an application for workforce investment incentive grants.

(b) The council shall make a report to the Legislative Oversight Commission on Workforce Investment for Economic Development and the Legislative Oversight Commission on Education Accountability on or before the first day of November of each year detailing: (1) All the publicly funded workforce investment programs operating in
the state, including the amount of federal and state funds expended by each program, how the funds are spent and the resulting improvement to the workforce; (2) the council’s recommendations concerning future use of funds for workforce investment programs; (3) the council’s analysis of operations of local workforce investment programs; (4) the council’s recommendations for the establishment of an overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards; (5) the status of one-stop system operations in the state, including all memoranda of understanding entered into by the one-stop partners and local workforce investment boards; (6) the status and outcome data regarding the council and local workforce investment boards’ success in linking West Virginia PROMISE scholars to employment with a West Virginia employer; and (7) any other information the commission may require.

(c) To aid in the report required in subsection (b) of this section, each local workforce investment board shall report annually to the council on or before the first day of September of each year on the status of one-stop centers within the region each board represents, attaching all memoranda of understanding entered into with one-stop partners.

*§5B-2B-6. Administration of council.*

(a) Workforce West Virginia shall provide administrative and other services to the council as the council requires.

(b) Workforce West Virginia shall facilitate the coordination of council activities and local workforce investment activities, including holding meetings with the executive directors of each local workforce investment board

*CLERK’S NOTE: This section was also amended by S.B. 454 (Chapter 27), which passed subsequent to this act.*
at least monthly. Any executive director of a local workforce investment board who participates in a meeting held pursuant to this subsection shall report to his or her board and the county commission of each county represented by the board regarding the meeting.

CHAPTER 259

(Com. Sub. for H.B. 2741 - By Delegates Webster, Ellem, Stemple, Mahan and Proudfoot)

[Passed March 7, 2007; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2007.]

AN ACT to amend and reenact §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, all relating to worthless checks; providing a defense for payment of worthless check within ten days; authorizing magistrate courts to accept certain criminal complaints from private citizens; preventing assessment of costs against a complainant in certain circumstances; requiring the defendant in a worthless check prosecution to pay court costs for each worthless check charge of which he or she stands convicted; and requiring the defendant to pay the additional court costs for each worthless check charge dismissed as a result of a plea agreement.

Be it enacted by the Legislature of West Virginia:

That §61-3-39a, §61-3-39b, §61-3-39f and §61-3-39h of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

§61-3-39a. Making, issuing, etc., worthless checks on a preexisting debt; penalty.

(a) It is unlawful for any person, firm or corporation to make, draw, issue, utter or deliver any check, draft or order for the payment of money or its equivalent on a preexisting debt upon any bank or other depository, knowing or having reason to know there is not sufficient funds on deposit in or credit with the bank or other depository with which to pay the check, draft or order upon presentation. The making, drawing, issuing, uttering or delivering of any check, draft or order on a preexisting debt, for or on behalf of any corporation, or its name, by any officer or agent of the corporation, shall subject the officer or agent to the penalty of this section to the same extent as though the check, draft or order was his or her own personal act.

(b) This section shall not apply to any check, draft or order when the payee or holder knows or has been expressly notified prior to the acceptance of same or has reason to believe that the drawer did not have on deposit or to his or her credit with the drawee sufficient funds to insure payment as aforesaid, nor shall this section apply to any postdated check, draft or order. This section shall not apply when the insufficiency of funds or credit is caused by any adjustment to the drawer's account by the bank or other depository without notice to the drawer or is caused by the dishonoring of any check, draft or order deposited in the account unless there is knowledge or reason to believe that the check, draft or order would be dishonored.
§61-3-39b. Payment as defense.

Payment of a dishonored check, draft or order, made to the magistrate clerk within ten days after the notice mailed to the defendant pursuant to section thirty-nine-g of this article, constitutes a complete defense or ground for dismissal of charges brought under section thirty-nine or section thirty-nine-a of this article.

§61-3-39f. Manner of filing complaint for warrant; form.

(A) Notwithstanding the provisions of section one, article one, chapter sixty-two of this code, a complaint for warrant for violations of section thirty-nine or section thirty-nine-a of this article need not be made upon oath before a magistrate but may be made upon oath before any magistrate court clerk or other court officer authorized to administer oaths or before a notary public in any county of the state and may be delivered by mail or otherwise to the magistrate court of the county wherein venue lies: Provided, That nothing in this section changes the authority and responsibility of the prosecuting attorney to prosecute any person or persons for violations of section thirty-nine or section thirty-nine-a of this article.

(B) A complaint for warrant for violations of section thirty-nine-a of this article shall be deemed sufficient if it is in form substantially as follows:
“State of West Virginia County of ........................., to
wit:................................................, upon oath complains that:

(a) Within one year past, on the ....... day of ..........., 20 ...., in the county stated above, .........................
("the maker") unlawfully issued and delivered to
................................. a check, draft or order with the
following words and figures:

............................... 20 .... No........
..............................................................
 ..............................................................
 ......... (Name of Bank)

Pay to the Order of ......................... $........ Dollars

For....................................................... when the maker
did not have funds on deposit in or credit with this bank with
which to pay the check, draft or order upon presentation
against the peace and dignity of the State of West Virginia.
The complainant therefore prays a warrant issue and that the
maker be apprehended and held to answer the warrant and
dealt with in relation thereto according to the law.

(b) At the time the check, draft or order was delivered
and before it was accepted there was either on the check or
on a record in the possession of the complainant the
following information regarding the identity of the maker:

(1) Name..............................................

(2) Residence address.............................

(3) Business address..............................

(4) Mailing address..............................

(5) Motor vehicle operator's number...............

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WORTHLESS CHECKS

(6) Home phone .............................................................. .
(7) Work phone .............................................................. .
(8) Place of employment .................................................. .

That since the time the check, draft or order was delivered the complainant has ascertained to the best of his or her knowledge and belief the following facts concerning the maker:

52 Full name ....................................................................... .
53 Home address ................................................................. .
54 Home phone no ............... Business phone no .............. .
55 Place of employment ..................................................... .
56 Race .......... Sex .......... Height ...................... .
57 Date of birth ..................................................................... .
      Day          Month          Year
      ................................................................. , Complainant
59 ........................................................................... .
60 ........................................................................... .
61 Address                                      Phone No.
62 (c) The complainant’s bank or financial institution has imposed on or collected from the complainant a service charge in the amount of $ ....................... in connection with the check, draft or order described above.

66 Taken, subscribed and sworn to before me,

67 this .......... day of .................... , 20.....
My commission expires the ....... day of ..........., 20....."

(C) The failure to supply information indicated in parts (b) or (c) of the foregoing complaint for warrant shall not affect the sufficiency of the complaint.

§61-3-39h. Payment of costs in worthless check cases; disposition of certain costs.

(a) In any prosecution under section thirty-nine or thirty-nine-a of this article, the costs that may otherwise be imposed against the drawer of any check, draft or order shall be imposed on the person initiating the prosecution if:

1. Payment of the check, draft or order is accepted by the payee or holder thereof after the filing of a complaint for warrant and the charge is subsequently withdrawn or dismissed at the request of the complainant: Provided, That the provisions of this subdivision do not apply where a charge is dismissed and restitution is paid as a condition of a plea agreement. The defendant shall be assessed costs for the prosecution of each charge of which he or she stands convicted and the fee for court costs assessed pursuant to section thirty-nine-g of this article for each charge dismissed as a result of the plea agreement;

2. The payee or holder had reason to believe that the check, draft or order would be dishonored;

3. The check, draft or order was postdated; or

4. The matter is dismissed for failure to prosecute.
(b) Costs collected by magistrate court for issuance of notice as authorized by section thirty-nine-g of this article may not be paid into the special county fund created by the provisions of section four, article three, chapter fifty of this code but shall be accounted for separately and retained by the county in a fund designated the Worthless Check Fund until the sheriff issues warrants in furtherance of the allowable expenses specifically provided for by this section. Such costs may not be included in any calculation of the amount of funds to be retained by the county under the provisions of section four, article three, chapter fifty of this code.

(c) A county may, after agreement with the court administrator's office of the Supreme Court of Appeals, appropriate and spend from the Worthless Check Fund herein established such sums as are necessary to pay or defray the expenses of providing a deputy sheriff to serve warrants for worthless check offenses and to pay or defray the expenses of providing additional deputy clerks in the office of the magistrate court clerk. After payment of these expenses, or after a determination that these services are not necessary, a county may appropriate and spend from the fund the sums necessary to defray:

(1) The expenses of providing bailiff and service of process services by the sheriff;

(2) The cost of acquiring or renting magistrate court offices and providing utilities and telephones and telephone service to such offices;

(3) The cost of complying with section thirty-nine-i of this article; and

(4) The expenses of other services are provided to magistrate courts by the county.
AN ACT to amend and reenact §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, all relating to appeals to the Board of Zoning Appeals; clarifying time period for written decision by board; automatic dismissal if time period not met; clarifying stays; and authorizing stay exemptions.

Be it enacted by the Legislature of West Virginia:

That §8A-8-11 and §8A-8-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. BOARD OF ZONING APPEALS.


§8A-8-12. Stays; exception.


(a) Within ten days of receipt of the appeal by the Board of Zoning Appeals, the board shall set a time for the hearing of the appeal and give notice. The hearing on the appeal must
be held within forty-five days of receipt of the appeal by the board.

(b) At least fifteen days prior to the date set for the hearing on the appeal, the Board of Zoning Appeals shall publish a notice of the date, time and place of the hearing on the appeal as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and written notice shall be given to the interested parties. The publication area shall be the area covered in the appeal.

(c) The Board of Zoning Appeals may require the party taking the appeal to pay for the cost of public notice and written notice to interested parties.

(d) At the hearing, any party may appear in person, by agent or by an attorney licensed to practice in this state.

(e) Every decision by the board must be in writing and state findings of fact and conclusions of law on which the board based its decision. If the board fails to provide findings of fact and conclusions of law adequate for decision by the circuit court and as a result of the failure, the circuit court returns an appealed matter to the board and dismisses jurisdiction over an applicant’s appeal without deciding the matter, whether the court returns the matter with or without restrictions, the board shall pay any additional costs for court filing fees, service of process and reasonable attorneys’ fees required to permit the person appealing the board’s decision to return the matter to the circuit court for completion of the appeal.
§8A-8-12. Stays; exception.

(a) When an appeal has been filed with the Board of Zoning Appeals, all proceedings and work on the premises in question shall be stayed, except as provided in subsection (b) of this section.

(b) A stay may not be had:

(1) If the official or board from where the appeal was taken certifies in writing to the Board of Zoning Appeals that a stay would cause imminent peril to life or property;

(2) Upon further administrative proceedings, including, but not limited to, submissions to and reviews by the staff or any administrative body; or

(3) Upon engineering or architectural work that does not disturb the real estate beyond what is necessary to complete engineering, survey work or other tests.

(c) If the written certification is filed pursuant to subdivision (1), subsection (b) of this section, then proceedings or work on the premises shall not be stayed.

(d) Nothing in this section prevents a party from obtaining a restraining order.
AN ACT to extend the time for the town council of the town of Smithers, Fayette County, to meet as a levying body for the purpose of presenting to the voters of the town an election to continue an additional town levy for solid waste services and retirement benefits from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of March, two thousand seven.

Be it enacted by the Legislature of West Virginia:

THE TOWN COUNCIL OF THE TOWN OF SMITHERS MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the town council of Smithers to meet as a levying body for election of additional levy for solid waste services and retirement benefits.

1 Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the town council of Smithers is hereby authorized to extend the time

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for its meeting as a levying body and certifying its actions to the state auditor from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand seven, for the purpose of submitting to the voters of the town of Smithers the continuation of an additional town levy for solid waste services and retirement benefits.

CHAPTER 262

(S.B. 217 - By Senators Bowman, Bailey, Jenkins, McCabe, White, Plymale, Yoder, Sypolt, Minard, Foster, Stollings, Boley and Barnes)

[Passed February 2, 2007; in effect from passage.]
[Approved by the Governor on February 20, 2007.]

AN ACT to extend the time for the city council of the city of Piedmont, Mineral County, to meet as a levying body for the purpose of presenting to the voters of the city an election to continue an additional municipal levy to maintain the existing public streets, fire hydrants and lines for the city of Piedmont and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of this additional levy from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand seven.

Be it enacted by the Legislature of West Virginia:
§1. Extending time for the city council for the city of Piedmont to meet as a levying body for an election continuing an additional levy to maintain the existing public streets, fire hydrants and lines for the city of Piedmont and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of the additional levy.

Notwithstanding the provisions of article eight, chapter eleven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, the city council of the city of Piedmont, Mineral County, is 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 thirty-first of May, two thousand seven, for the purpose of submitting to the voters of the city of Piedmont the question of continuing an additional municipal levy to maintain the existing public streets, fire hydrants and lines for the city of Piedmont and for payment of any obligation by the city due to higher costs and for the purpose of paying all costs incurred in the laying of this additional levy.
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 Department of Agriculture, fund 0131, fiscal year 2007, organization 1400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2007,
organization 1400, to the Department of Administration - Public Defender Services, fund 0226, fiscal year 2007, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2007, organization 0402, to the Higher Education Policy Commission - System - Control Account, fund 0586, fiscal year 2007, organization 0442, 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 Fund, General Revenue, dated the eighteenth day of March, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, It appears from the 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 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 0131, fiscal year 2007, organization 1400, be supplemented and amended by increasing existing items of appropriation and adding a new appropriation as follows:
**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**EXECUTIVE**

11-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2007 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Surplus (R)</td>
<td>$100,000</td>
</tr>
<tr>
<td>Threat Preparedness - Surplus</td>
<td>$150,000</td>
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And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0132, fiscal year 2007, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**EXECUTIVE**

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2007 Org 1400
<table>
<thead>
<tr>
<th>Appropriations</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td></td>
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<tr>
<td>23</td>
<td>Activity</td>
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<tr>
<td>24</td>
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<tr>
<td>25 6a Marlinton Flood Wall - Surplus (R) . . . 948</td>
<td>$1,500,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Marlinton Flood Wall - Surplus (fund 0132, activity 948) at the close of fiscal year 2007 is hereby reappropriated for expenditure during fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0226, fiscal year 2007, organization 0221, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations of General Revenue.**

**ADMINISTRATION**

26-**Public Defender Services**

(WV Code Chapter 29)

Fund 0226 FY 2007 Org 0221

<table>
<thead>
<tr>
<th>Appropriations</th>
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<tr>
<td>44 10 Appointed Counsel Fees -</td>
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<tr>
<td>45 10a Surplus (R) . . . . . . . . . . . . . . . 435</td>
<td>$2,906,830</td>
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</table>
Any unexpended balance remaining in the appropriation for Appointed Counsel Fees - Surplus (fund 0226, activity 435) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0313, fiscal year 2007, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF EDUCATION

44-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2007 Org 0402

<table>
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<th>Activity</th>
<th>General Revenue Funds</th>
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</thead>
<tbody>
<tr>
<td>6 Increased Enrollment - Surplus (R)</td>
<td>$1,838,147</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Increased Enrollment - Surplus (fund 0313, activity 059) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0586, fiscal year 2007, organization 0442, be supplemented and amended by adding new items of appropriation as follows:
APPROPRIATIONS

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

HIGHER EDUCATION

89-Higher Education Policy Commission - System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2007 Org 0442

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>29a</td>
<td>Blanchette Rockefeller</td>
</tr>
<tr>
<td>29b</td>
<td>Neurosciences Institute</td>
</tr>
<tr>
<td>29c</td>
<td>(BRNI) - Surplus (R) . . . . . . . . 947 $1,000,000</td>
</tr>
<tr>
<td>29d</td>
<td>Higher Education -</td>
</tr>
<tr>
<td>29e</td>
<td>Special Projects - Surplus (R) . . . 946 1,400,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Blanchette Rockefeller Neurosciences Institute (BRNI) - Surplus (fund 0586, activity 947) and Higher Education - Special Projects - Surplus (fund 0586, activity 946) at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

The purpose of this supplemental appropriation bill is to supplement, amend, increase and add items of appropriation in the aforesaid accounts for the designated spending units for expenditure during fiscal year two thousand seven.
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 - Division of General Services, fund 0230, fiscal year 2007, organization 0211, to the Department of Commerce - Division of Tourism, fund 0246, fiscal year 2007, organization 0304, to the Department of Commerce - West Virginia Development Office, fund 0256, fiscal year 2007, organization 0307, to the Department of Commerce - Division of Natural Resources, fund 0265, fiscal year 2007, organization 0310, to the Department of Commerce - Division of Miners Health, Safety and Training, fund 0277, fiscal year 2007, organization 0314, to the Department of Education - State FFA-FHA Camp and Conference Center, fund 0306, fiscal year 2007, organization 0402, to the Department of Education - State Department of Education, fund 0313, fiscal year 2007, organization 0402, 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 Military Affairs and Public Safety - Division of Homeland
Security and Emergency Management, fund 0443, fiscal year 2007, organization 0606, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2007, organization 0608, and to the Department of Revenue - Office of the Secretary, fund 0465, fiscal year 2007, organization 0701, 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 Fund, General Revenue, dated the eighteenth day of March, two thousand seven, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, The Governor, by executive message dated the eighteenth day of March, two thousand seven, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand seven; 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 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 0230, fiscal year 2007, organization 0211, be supplemented and amended by adding a new item of appropriation as follows:
Ch. 2] APPROPRIATIONS

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF ADMINISTRATION

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2007 Org 0211

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>General Revenue Activity Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>6a Veterans Memorial Fund</td>
<td>690 $75,000</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0246, fiscal year 2007, organization 0304, be supplemented, increased and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF COMMERCE

31-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2007 Org 0304

2433
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0256, fiscal year 2007, organization 0307, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF COMMERCE

34-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2007 Org 0307

44a Mining Safety Technology (R) . . . . 945 $1,000,000

Any unexpended balances remaining in the appropriation for Mining Safety Technology (fund 0256, activity 945) at the close of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

The appropriation above for Mining Safety Technology (fund 0256, activity 945) 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.

And, That 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 items as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of 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>$439,591</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>142,337</td>
</tr>
<tr>
<td>6 Unclassified</td>
<td>501,987</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund
0277, fiscal year 2007, organization 0314, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF COMMERCE

37-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2007 Org 0314

<table>
<thead>
<tr>
<th>Activity Funds</th>
<th>General Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0306, fiscal year 2007, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF EDUCATION
APPROPRIATIONS

43-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2007 Org 0402

General

Act- Revenue

ivity Funds

Unclassified (R) ................. 099 $2,000,000

Any unexpended balance remaining in the appropriation for Unclassified (fund 0306, activity 099) at the close of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0313, fiscal year 2007, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF EDUCATION

44-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2007 Org 0402

2437
And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0407, fiscal year 2007, organization 0506, be supplemented and amended by increasing an existing item and adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

59-Division of Health-

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2007 Org 0506

General
Act-
Revenue

Activity
Funds

5 Chief Medical Examiner .............. 045 $353,220
42a Capital Outlay and Maintenance (R) .. 755 500,000
42b Antiviral Vaccine Purchases (R) ...... 955 713,000
Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0407, activity 755), and Antiviral Vaccine Purchases (fund 0407, activity 955) at the close of fiscal year 2007 are hereby reappropriated for expenditure during the fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0525, fiscal year 2007, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

60-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2007 Org 0506

General
Act-
Reven-
ity
Funds

8 Institutional Facilities Operations . . 335 $7,618,000

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0443, fiscal year 2007, organization 0606, be supplemented and amended by adding new items of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

68-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2007 Org 0606

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>$675,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0443, activity 099) at the close of the fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

And, That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand seven, to fund 0450, fiscal year 2007, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:
Section 1. Appropriations of 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

General
Act- Revenue
ivity Funds

Payments to Federal, County and/or

Regional Jails ................. 555 $5,449,590

That the total appropriation for the fiscal year ending the
thirtieth day of June, two thousand seven, to fund 0465, fiscal
year 2007, organization 0701, be supplemented and amended
by adding a new item of appropriation as follows:
TITLE II – APPROPRIATIONS.

Section 1. Appropriations of General Revenue.

DEPARTMENT OF REVENUE

78-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2007 Org 0701

General

Activity Revenue Funds

Unclassified - Transfer (R) ........ 482 $6,500,000

Any unexpended balance remaining in the appropriation for Unclassified - Transfer (fund 0465, activity 482) at the close of fiscal year 2007 is hereby reappropriated for expenditure during the fiscal year 2008.

The above appropriation for Unclassified - Transfer (activity 482) shall be used and transferred to reconcile audit issues in Workforce West Virginia and shall only be utilized and transferred upon approval of the Secretary of 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 fiscal year two thousand seven.
AN ACT to amend and reenact §44-1-14a of the Code of West Virginia, 1931, as amended, relating to administration of estates by fiduciary commissioners; requiring commissioner to conclude administration of certain estates upon request by interested party; limiting notice required to creditors and payment of related fees by personal representatives; setting expiration of time period for unpaid creditors to file claims against estate; and requiring commissioner to conduct hearing on claim filed by unpaid creditor.

Be it enacted by the Legislature of West Virginia:

That §44-1-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-14a. Notice of administration of estate; time limits for filing of objections; liability of personal representative.

(a) Within thirty days of the filing of the appraisement of any estate as required in section fourteen of this article, the
clerk of the county commission shall publish, once a week for two successive weeks, in a newspaper of general circulation within the county of the administration of the estate, a notice, which is to include:

(1) The name of the decedent;

(2) The name and address of the county commission before whom the proceedings are pending;

(3) The name and address of the personal representative;

(4) The name and address of any attorney representing the personal representative;

(5) The name and address of the fiduciary commissioner, if any;

(6) The date of first publication;

(7) A statement that claims against the estate must be filed in accordance with the provisions of article two or article three-a of this chapter;

(8) A statement that any person seeking to impeach or establish a will must make a complaint in accordance with the provisions of section eleven, twelve or thirteen, article five, chapter forty-one of this code;

(9) A statement that an interested person objecting to the qualifications of the personal representative or the venue or jurisdiction of the court must be filed with the county commission within three months after the date of first publication or thirty days of service of the notice, whichever is later; and
(10) If the appraisement of the assets of the estate shows the value to be one hundred thousand dollars or less, exclusive of real estate specifically devised and nonprobate assets, or, if it appears to the clerk that there is only one beneficiary of the probate estate and that the beneficiary is competent at law, a statement substantially as follows: “Settlement of the estate of the following named decedents will proceed without reference to a fiduciary commissioner unless within ninety days from the first publication of this notice a reference is requested by a party in interest or an unpaid creditor files a claim and good cause is shown to support reference to a fiduciary commissioner.” If a party in interest requests the fiduciary commissioner to conclude the administration of the estate or an unpaid creditor files a claim, no further notice to creditors shall be published in the newspaper, and the personal representative shall be required to pay no further fees, except to the fiduciary commissioner for conducting any hearings, or performing any other duty as a fiduciary commissioner. The time period for filing claims against the estate shall expire upon the time period set out in the notice to creditors published by the clerk of the county commission as required in this subsection (a). In the event that an unpaid creditor files a claim, the fiduciary commissioner shall conduct a hearing on the claim filed by the creditor, otherwise, the fiduciary commissioner shall conclude the administration of the estate as requested by the interested party.

(b) If no appraisement is filed within the time period established pursuant to section fourteen of this article, the county clerk shall send a notice to the personal representative by first class mail, postage prepaid, indicating that the appraisement has not been filed. Notwithstanding any other provision of this code to the contrary, the county clerk shall publish the notice required in subsection (a) of this section.
within six months of the qualification of the personal representative.

(c) The personal representative shall promptly make a diligent search to determine the names and addresses of creditors of the decedent who are reasonably ascertainable.

(d) The personal representative shall, within ninety days after the date of first publication, serve a copy of the notice, published pursuant to subsection (a) of this section, by first class mail, postage prepaid, or by personal service on the following persons:

(1) If the personal representative is not the decedent’s surviving spouse and not the sole beneficiary or sole heir, the decedent’s surviving spouse, if any;

(2) If there is a will and the personal representative is not the sole beneficiary, any beneficiaries;

(3) If there is not a will and the personal representative is not the sole heir, any heirs;

(4) The trustee of any trust in which the decedent was a grantor, if any; and

(5) All creditors identified under subsection (c) of this section, other than a creditor who filed a claim as provided in article two of this chapter or a creditor whose claim has been paid in full.

(e) Any person interested in the estate who objects to the qualifications of the personal representative or the venue or jurisdiction of the court, shall file notice of an objection with the county commission within ninety days after the date of the first publication as required in subsection (a) of this

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section or within thirty days after service of the notice as required by subsection (d) of this section, whichever is later. If an objection is not timely filed, the objection is forever barred.

(f) A personal representative acting in good faith is not personally liable for serving notice under this section, notwithstanding a determination that notice was not required by this section. A personal representative acting in good faith who fails to serve the notice required by this section is not personally liable. The service of the notice in accordance with this subsection may not be construed to admit the validity or enforceability of a claim.

(g) The clerk of the county commission shall collect a fee of twenty dollars for the publication of the notice required in this section.

(h) For purposes of this section, the term beneficiary means a person designated in a will to receive real or personal property.

CHAPTER 4

(S.B. 1001 - By Senators Tomblin, Mr. President, and Caruth) [By Request of the Executive]

[Passed March 18, 2007; in effect ninety days from passage.] [Approved by the Governor on April 2, 2007.]

AN ACT to amend and reenact §30-5-1b, §30-5-12, §30-5-12b, §30-5-16b and §30-5-29 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new
section, designated §30-5-12c; to amend and reenact §30-7-15c of said code; and to amend and reenact §60A-3-308 of said code, all relating generally to the authorization of certain pharmacy-related practices; authorizing electronic prescribing; and extending the date for pharmacy collaborative agreements.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b, §30-5-12, §30-5-12b, §30-5-16b and §30-5-29 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 §30-5-12c; that §30-7-15c of said code be amended and reenacted; and that §60A-3-308 of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.

60A. Uniformed Controlled Substances Act.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

Article

5. Pharmacists, Pharmacy Technicians, Pharmacy Interns and Pharmacies.

7. Registered Professional Nurses.

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.

§30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.

§30-5-12b. Definitions; selection of generic drug products; exceptions; records; labels; manufacturing standards; rules; notice of substitution; complaints; notice and hearing; immunity.

§30-5-12c. Electronic prescribing.

§30-5-16b. Partial filling of prescriptions.

§30-5-29. Collaborative pharmacy practice continuation.
§30-5-1b. Definitions.

The following words and phrases, as used in this article, have the following meanings, unless the context otherwise requires:

(1) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(2) "Board of Pharmacy" or "board" means the West Virginia State Board of Pharmacy.

(3) "Collaborative pharmacy practice" is that practice of pharmacy where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist or pharmacists may perform certain patient care functions authorized by the physician or physicians under certain specified conditions and limitations.

(4) "Collaborative pharmacy practice agreement" is a written and signed agreement between a pharmacist, a physician and the individual patient, or the patient’s authorized representative who has granted his or her informed consent, that provides for collaborative pharmacy practice for the purpose of drug therapy management of a patient, which has been approved by the Board of Pharmacy, the Board of Medicine in the case of an allopathic physician or the West Virginia Board of Osteopathy in the case of an osteopathic physician.

(5) "Compounding" means:

(A) The preparation, mixing, assembling, packaging or labeling of a drug or device:
PROFESSIONS AND OCCUPATIONS

(i) As the result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice for sale or dispensing; or

(ii) For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing; or

(B) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

(6) "Confidential information" means information maintained by the pharmacist in the patient record or which is communicated to the patient as part of patient counseling or which is communicated by the patient to the pharmacist. This information is privileged and may be released only to the patient or to other members of the health care team and other pharmacists where, in the pharmacists' professional judgment, the release is necessary to the patient's health and well-being; to health plans, as that term is defined in 45 CFR §160.103, for payment; to other persons or governmental agencies authorized by law to receive the privileged information; as necessary for the limited purpose of peer review and utilization review; as authorized by the patient or required by court order. Appropriate disclosure, as permitted by this section, may occur by the pharmacist either directly or through an electronic data intermediary, as defined in subdivision (14) of this section.

(7) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.
CH. 4] PROFESSIONS AND OCCUPATIONS

(8) "Device" means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: Federal or state law requires dispensing by or on the order of a physician".

(9) "Dispense" or "dispensing" means the preparation and delivery of a drug or device in an appropriately labeled and suitable container to a patient or patient's representative or surrogate pursuant to a lawful order of a practitioner for subsequent administration to, or use by, a patient.

(10) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(11) "Drug" means:

(A) Articles recognized as drugs in the USP-DI, facts and comparisons, physician's desk reference or supplements thereto for use in the diagnosis, cure, mitigation, treatment or prevention of disease in human or other animals;

(B) Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

(C) Articles intended for use as a component of any articles specified in paragraph (A) or (B) of this subdivision.

(12) "Drug regimen review" includes, but is not limited to, the following activities:

(A) Evaluation of the prescription drug orders and patient records for:
(i) Known allergies;

(ii) Rational therapy-contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

(B) Evaluation of the prescription drug orders and patient records for duplication of therapy.

(C) Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:

(i) Drug-drug;

(ii) Drug-food;

(iii) Drug-disease; and

(iv) Adverse drug reactions.

(D) Evaluation of the prescription drug orders and patient records for proper use, including overuse and underuse, and optimum therapeutic outcomes.

(13) "Drug therapy management" means the review of drug therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a physician regarding adjustment of the regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management shall be limited to:
(A) Implementing, modifying and managing drug therapy according to the terms of the collaborative pharmacy practice agreement;

(B) Collecting and reviewing patient histories;

(C) Obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

(D) Ordering screening laboratory tests that are dose related and specific to the patient's medication or are protocol driven and are also specifically set out in the collaborative pharmacy practice agreement between the pharmacist and physician.

(14) "Electronic data intermediary" means an entity that provides the infrastructure to connect a computer system, hand-held electronic device or other electronic device used by a prescribing practitioner with a computer system or other electronic device used by a pharmacist to facilitate the secure transmission of:

(A) An electronic prescription order;

(B) A refill authorization request;

(C) A communication; or

(D) Other patient care information.

(15) “E-prescribing” means the transmission, using electronic media, of prescription or prescription-related information between a practitioner, pharmacist, pharmacy benefit manager or health plan as defined in 45 CFR §160.103, either directly or through an electronic data intermediary. E-prescribing includes, but is not limited to,
two-way transmissions between the point of care and the pharmacist. E-prescribing may also be referenced by the terms “electronic prescription” or “electronic order”.

(16) "Intern" means an individual who is:

(A) Currently registered by this state to engage in the practice of pharmacy while under the supervision of a licensed pharmacist and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or

(B) A graduate of an approved college of pharmacy or a graduate who has established educational equivalency by obtaining a foreign pharmacy graduate examination committee (FPGEC) certificate who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(C) A qualified applicant awaiting examination for licensure; or

(D) An individual participating in a residency or fellowship program.

(17) "Labeling" means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal law or regulation and state law or rule.

(18) "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than ten percent prescription drugs via the mail.
(19) "Manufacturer" means a person engaged in the manufacture of drugs or devices.

(20) "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its contents and the promotion and marketing of the drugs or devices. Manufacturing also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons.

(21) "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(22) "Patient counseling" means the oral communication by the pharmacist of information, as defined in the rules of the board, to the patient to improve therapy by aiding in the proper use of drugs and devices.

(23) "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

(24) "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms or arresting or slowing of a disease process as defined in the rules of the board.
(25) "Pharmacist" or "registered pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care.

(26) "Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and personnel.

(27) "Pharmacist's scope of practice pursuant to the collaborative pharmacy practice agreement" means those duties and limitations of duties placed upon the pharmacist by the collaborating physician, as jointly approved by the Board of Pharmacy and the Board of Medicine or the Board of Osteopathy.

(28) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or displayed for sale at retail and pharmaceutical care is provided and any place outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(29) "Physician" means an individual currently licensed, in good standing and without restrictions, as an allopathic physician by the West Virginia Board of Medicine or an osteopathic physician by the West Virginia Board of Osteopathy.

(30) "Pharmacy technician" means registered supportive personnel who work under the direct supervision of a pharmacist who have passed an approved training program as described in this article.
(31) "Practitioner" means an individual currently licensed, registered or otherwise authorized by any state, territory or district of the United States to prescribe and administer drugs in the course of professional practices, including allopathic and osteopathic physicians, dentists, physician assistants, optometrists, veterinarians, podiatrists and nurse practitioners as allowed by law.

(32) "Preceptor" means an individual who is currently licensed as a pharmacist by the board, meets the qualifications as a preceptor under the rules of the board and participates in the instructional training of pharmacy interns.

(33) "Prescription drug" or "legend drug" means a drug which, under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(A) "Caution: Federal law prohibits dispensing without prescription"; or

(B) "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian"; or a drug which is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only.

(34) "Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient.

(35) "Prospective drug use review" means a review of the patient's drug therapy and prescription drug order, as defined in the rules of the board, prior to dispensing the drug as part of a drug regimen review.
"USP-DI" means the United States pharmacopeia-dispensing information.

"Wholesale distributor" means any person engaged in wholesale distribution of drugs, including, but not limited to, manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug trader and retail pharmacies that conduct wholesale distributions.

§30-5-12. Responsibility for quality of drugs dispensed; exception; falsification of labels; deviation from prescription.

(a) All persons, whether licensed pharmacists or not, shall be responsible for the quality of all drugs, chemicals and medicines they may sell or dispense, with the exception of those sold in or dispensed unchanged from the original retail package of the manufacturer, in which event the manufacturer shall be responsible.

(b) Except as provided in section twelve-b of this article, the following acts shall be prohibited: (1) The falsification of any label upon the immediate container, box and/or package containing a drug; (2) the substitution or the dispensing of a different drug in lieu of any drug prescribed in a prescription without the approval of the practitioner authorizing the original prescription: Provided, That this shall not be construed to interfere with the art of prescription compounding which does not alter the therapeutic properties of the prescription or appropriate generic substitute; (3) the filling or refilling of any prescription for a greater quantity of any drug or drug product than that prescribed in the original prescription without a written or electronic order or an oral order reduced to writing, or the refilling of a prescription

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Ch. 4] PROFESSIONS AND OCCUPATIONS

21 without the verbal, written or electronic consent of the
22 practitioner authorizing the original prescription.

§30-5-12b. Definitions; selection of generic drug products;
exceptions; records; labels; manufacturing
standards; rules; notice of substitution;
complaints; notice and hearing; immunity.

1 (a) As used in this section:

2 (1) "Brand name" means the proprietary or trade name
3 selected by the manufacturer and placed upon a drug or drug
4 product, its container, label or wrapping at the time of
5 packaging.

6 (2) "Generic name" means the official title of a drug or
7 drug combination for which a new drug application, or an
8 abbreviated new drug application, has been approved by the
9 United States Food and Drug Administration and is in effect.

10 (3) "Substitute" means to dispense without the
11 prescriber's express authorization a therapeutically equivalent
12 generic drug product in the place of the drug ordered or
13 prescribed.

14 (4) "Equivalent" means drugs or drug products which are
15 the same amounts of identical active ingredients and same
16 dosage form and which will provide the same therapeutic
17 efficacy and toxicity when administered to an individual and
18 is approved by the United States Food and Drug
19 Administration.

20 (b) A pharmacist who receives a prescription for a brand
21 name drug or drug product shall substitute a less expensive
22 equivalent generic name drug or drug product unless in the
23 exercise of his or her professional judgment the pharmacist
believes that the less expensive drug is not suitable for the particular patient: Provided, That no substitution may be made by the pharmacist where the prescribing practitioner indicates that, in his or her professional judgment, a specific brand name drug is medically necessary for a particular patient.

(c) A written prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner has indicated in his or her own handwriting the words "Brand Medically Necessary". The following sentence shall be printed on the prescription form. "This prescription may be filled with a generically equivalent drug product unless the words 'Brand Medically Necessary' are written, in the practitioner's own handwriting, on this prescription form.": Provided, That "Brand Medically Necessary" may be indicated on the prescription order other than in the prescribing practitioner's own handwriting unless otherwise required by federal mandate.

(d) A verbal prescription order shall permit the pharmacist to substitute an equivalent generic name drug or drug product except where the prescribing practitioner shall indicate to the pharmacist that the prescription is "Brand Necessary" or "Brand Medically Necessary". The pharmacist shall note the instructions on the file copy of the prescription or chart order form.

(e) No person may by trade rule, work rule, contract or in any other way prohibit, restrict, limit or attempt to prohibit, restrict or limit the making of a generic name substitution under the provisions of this section. No employer or his or her agent may use coercion or other means to interfere with the professional judgment of the pharmacist in deciding which generic name drugs or drug products shall be stocked.
or substituted: Provided, That this section shall not be construed to permit the pharmacist to generally refuse to substitute less expensive therapeutically equivalent generic drugs for brand name drugs and that any pharmacist so refusing shall be subject to the penalties prescribed in section twenty-two of this article.

(f) A pharmacist may substitute a drug pursuant to the provisions of this section only where there will be a savings to the buyer. Where substitution is proper, pursuant to this section, or where the practitioner prescribes the drug by generic name, the pharmacist shall, consistent with his or her professional judgment, dispense the lowest retail cost, effective brand which is in stock.

(g) All savings in the retail price of the prescription shall be passed on to the purchaser; these savings shall be equal to the difference between the retail price of the brand name product and the customary and usual price of the generic product substituted therefor: Provided, That in no event shall such savings be less than the difference in acquisition cost of the brand name product prescribed and the acquisition cost of the substituted product.

(h) Each pharmacy shall maintain a record of any substitution of an equivalent generic name drug product for a prescribed brand name drug product on the file copy of a written, electronic or verbal prescription or chart order. Such record shall include the manufacturer and generic name of the drug product selected.

(i) All drugs shall be labeled in accordance with the instructions of the practitioner.

(j) Unless the practitioner directs otherwise, the prescription label on all drugs dispensed by the pharmacist
shall indicate the generic name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

(k) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices by:

1. Labeling products with the name of the original manufacturer and control number;

2. Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

3. Marking products with identification code or monogram; and

4. Labeling products with an expiration date.

(l) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code which establish a formulary of generic type and brand name drug products which are determined by the board to demonstrate significant biological or therapeutic inequivalence and which, if substituted, would pose a threat to the health and safety of patients receiving prescription medication. The formulary shall be promulgated by the board within ninety days of the date of passage of this section and may be amended in accordance with the provisions of chapter twenty-nine-a of this code.
(m) No pharmacist shall substitute a generic-named therapeutically equivalent drug product for a prescribed brand name drug product if the brand name drug product or the generic drug type is listed on the formulary established by the West Virginia Board of Pharmacy pursuant to this article or is found to be in violation of the requirements of the United States Food and Drug Administration.

(n) Any pharmacist who substitutes any drug shall, either personally or through his or her agent, assistant or employee, notify the person presenting the prescription of such substitution. The person presenting the prescription shall have the right to refuse the substitution. Upon request the pharmacist shall relate the retail price difference between the brand name and the drug substituted for it.

(o) Every pharmacy shall post in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign which shall read: "West Virginia law requires pharmacists to substitute a less expensive generic-named therapeutically equivalent drug for a brand name drug, if available, unless you or your physician direct otherwise". The sign shall be printed with lettering of at least one and one-half inches in height with appropriate margins and spacing as prescribed by the West Virginia Board of Pharmacy.

(p) The West Virginia Board of Pharmacy shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code setting standards for substituted drug products, obtaining compliance with the provisions of this section and enforcing the provisions of this section.

(q) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any
violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

(r) Fifteen days after the board has notified, by registered mail, a person, firm, corporation or copartnership that such person, firm, corporation or copartnership is suspected of being in violation of a provision of this section, the board shall hold a hearing on the matter. If, as a result of the hearing, the board determines that a person, firm, corporation or copartnership is violating any of the provisions of this section, it may, in addition to any penalties prescribed by section twenty-two of this article, suspend or revoke the permit of any person, firm, corporation or copartnership to operate a pharmacy.

(s) No pharmacist complying with the provisions of this section shall be liable in any way for the dispensing of a generic-named therapeutically equivalent drug, substituted under the provisions of this section, unless the generic-named therapeutically equivalent drug was incorrectly substituted.

(t) In no event where the pharmacist substitutes a drug under the provisions of this section shall the prescribing physician be liable in any action for loss, damage, injury or death of any person occasioned by or arising from the use of the substitute drug unless the original drug was incorrectly prescribed.

(u) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.
§30-5-12c. Electronic prescribing.

(a) Notwithstanding any other provision of this code to the contrary, E-prescribing, as defined in subdivision (15), section one-b of this article, is hereby permitted and electronic prescriptions shall be treated as valid prescriptions orders. E-prescribing of controlled substances shall not be permitted, except as provided by emergency rules promulgated by the board pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, which such rules shall not be contrary to any applicable federal law, rule or regulation.

(b) All electronic data intermediaries shall ensure the integrity of all electronic prescriptions and confidential information, such that the data or information are not altered or destroyed in an unauthorized manner. Electronic data intermediaries shall implement policies and procedures to protect electronic prescriptions and all confidential information from improper alteration or destruction.

(d) The board shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement and enforce the provisions of this section.

§30-5-16b. Partial filling of prescriptions.

(a) The partial filling of a prescription for a controlled substance listed in Schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription or on the written record of the emergency oral prescription. The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling: Provided, That if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond seventy-two hours without a new prescription.

(b) To the extent E-prescribing of controlled substances is permitted by rules promulgated pursuant to the provisions of subsection (d), section twelve of this article and not contrary to any applicable federal law, rule or regulation, the partial filling of an electronic prescription for a controlled substance listed in Schedule II shall be permissible if the pharmacist is unable to supply the full quantity called for in an electronic prescription and the pharmacist makes a notation on the quantity supplied within the electronic record. The remaining portion of the prescription may be filled consistent with the limitations set forth in subsection (a) of this section.
§30-5-29. Collaborative pharmacy practice continuation.

Pursuant to the provisions of article ten, chapter four of this code, pharmacy collaborative agreements in community settings shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to said article.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15c. Form of prescriptions; termination of authority; renewal; notification of termination of authority.

(a) Prescriptions authorized by an advanced nurse practitioner must comply with all applicable state and federal laws; must be signed by the prescriber with the initials "A. N. P." or the designated certification title of the prescriber; and must include the prescriber's identification number assigned by the board or the prescriber’s national provider identifier assigned by the National Provider System pursuant to 45 CFR §162.408.

(b) Prescriptive authorization shall be terminated if the advanced nurse practitioner has:

(1) Not maintained current authorization as an advanced nurse practitioner; or

(2) Prescribed outside the advanced nurse practitioner's scope of practice or has prescribed drugs for other than therapeutic purposes; or
(3) Has not filed verification of a collaborative agreement with the board.

(c) Prescriptive authority for an advanced nurse practitioner must be renewed biennially. Documentation of eight contact hours of pharmacology during the previous two years must be submitted at the time of renewal.

(d) The board shall notify the Board of Pharmacy and the Board of Medicine within twenty-four hours after termination of, or change in, an advanced nurse practitioner's prescriptive authority.

CHAPTER 60A. UNIFORMED CONTROLLED SUBSTANCES ACT.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-308. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the lawful prescription of a practitioner.

(b) In emergency situations, as defined by rule of the said appropriate department, board or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the
requirements of section three hundred six of this article. No
prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner,
other than a pharmacy, to an ultimate user, a controlled
substance included in Schedule III or IV, which is a
prescription drug as determined under appropriate state or
federal statute, shall not be dispensed without a lawful
prescription of a practitioner. The prescription shall not be
filled or refilled more than six months after the date thereof
or be refilled more than five times unless renewed by the
practitioner.

(d) (1) A controlled substance included in Schedule V
shall not be distributed or dispensed other than for a
medicinal purpose: Provided, That buprenorphine shall be
dispensed only by prescription pursuant to subsections (a),
(b) and (c) of this section: Provided, however, That the
controlled substances included in subsection (e), section two
hundred twelve, article two of this chapter shall be dispensed,
sold or distributed only by a physician, in a pharmacy by a
pharmacist or pharmacy technician, or health care
professional.

(2) If the substance described in subsection (e), section
two hundred twelve, article two of this chapter is dispensed,
sold or distributed in a pharmacy:

(A) The substance shall be dispensed, sold or distributed
only by a pharmacist or a pharmacy technician; and

(B) Any person purchasing, receiving or otherwise
acquiring any such substance shall produce a photographic
identification issued by a state or federal governmental entity
reflecting his or her date of birth.

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AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to the compensation of the membership of the West Virginia State Police.

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 wages 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)**

<table>
<thead>
<tr>
<th>SUPERVISORY AND NONSUPERVISORY RANKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training . . . . . . . . $2,218.50 Mo.</td>
</tr>
<tr>
<td>Cadet Trooper After Training . . . . 2,621.50 Mo.</td>
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<tr>
<td>Trooper Second Year .......................</td>
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<tr>
<td>Trooper Third Year .......................</td>
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<tr>
<td>Trooper Fourth &amp; Fifth Year .............</td>
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### State Police

<table>
<thead>
<tr>
<th>Rank</th>
<th>Annual Salary</th>
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<tbody>
<tr>
<td>Senior Trooper</td>
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<tr>
<td>Trooper First Class</td>
<td>$36,770</td>
</tr>
<tr>
<td>Corporal</td>
<td>$38,858</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$43,034</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$45,122</td>
</tr>
<tr>
<td>Second Lieutenant</td>
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<td>First Lieutenant</td>
<td>$49,298</td>
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<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>
<td>$55,562</td>
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### Annual Salary Schedule (Base Pay)

#### Administration Support

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<th>Classification</th>
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<tr>
<td>Specialist I</td>
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<td>Specialist II</td>
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<td>Specialist III</td>
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<td>Specialist IV</td>
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<td>Specialist V</td>
<td>$43,034</td>
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<td>Specialist VI</td>
<td>$45,122</td>
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<td>Specialist VII</td>
<td>$47,210</td>
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<td>Specialist VIII</td>
<td>$49,298</td>
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#### Criminalist Classification

<table>
<thead>
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<td>Criminalist IV</td>
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<td>Criminalist V</td>
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<td>Criminalist VI</td>
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<td>Criminalist VII</td>
<td>$47,210</td>
</tr>
<tr>
<td>Criminalist VIII</td>
<td>$49,298</td>
</tr>
</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>Annual Salary</th>
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<tbody>
<tr>
<td>Cadet During Training</td>
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<td>Trooper First Class</td>
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<td>Corporal</td>
<td>38,858</td>
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<td>Sergeant</td>
<td>43,034</td>
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<td>First Sergeant</td>
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<td>Second Lieutenant</td>
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<td>Lieutenant Colonel</td>
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#### ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION

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<th>Classification</th>
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<td>V</td>
<td>43,034</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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### CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
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<th>Annual Salary</th>
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<td>II</td>
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<td>V</td>
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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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</thead>
<tbody>
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<td>Cadet Trooper After Training</td>
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<tr>
<td>Sergeant</td>
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<tr>
<td>First Sergeant</td>
<td>47,322</td>
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<tr>
<td>Second Lieutenant</td>
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<td>First Lieutenant</td>
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<td>Captain</td>
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<td>Major</td>
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<td>Lieutenant Colonel</td>
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Ch. 5] STATE POLICE

ANNUAL SALARY SCHEDULE (BASE PAY)

ADMINISTRATION SUPPORT
SPECIALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Level</th>
<th>Annual Salary</th>
</tr>
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<tbody>
<tr>
<td>I</td>
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<td>II</td>
<td>$39,882</td>
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<tr>
<td>III</td>
<td>$40,470</td>
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<td>IV</td>
<td>$41,058</td>
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<td>V</td>
<td>$45,234</td>
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<td>VI</td>
<td>$47,322</td>
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<tr>
<td>VII</td>
<td>$49,410</td>
</tr>
<tr>
<td>VIII</td>
<td>$51,498</td>
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</table>

ANNUAL SALARY SCHEDULE (BASE PAY)
CRIMINALIST CLASSIFICATION

<table>
<thead>
<tr>
<th>Level</th>
<th>Annual Salary</th>
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<tr>
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<td>III</td>
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<td>$41,058</td>
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<td>V</td>
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</tr>
<tr>
<td>VII</td>
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<td>VIII</td>
<td>$51,498</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>
</tr>
</thead>
<tbody>
<tr>
<td>Cadet During Training</td>
<td>$2,675.50 Mo. $32,106</td>
</tr>
<tr>
<td>Cadet Trooper After Training</td>
<td>3,263.17 Mo. $39,158</td>
</tr>
<tr>
<td>Trooper Second Year</td>
<td>$40,122</td>
</tr>
<tr>
<td>Classification</td>
<td>Salary</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>----------</td>
</tr>
<tr>
<td>Trooper Third Year</td>
<td>$40,494</td>
</tr>
<tr>
<td>Senior Trooper</td>
<td>$40,882</td>
</tr>
<tr>
<td>Trooper First Class</td>
<td>$41,470</td>
</tr>
<tr>
<td>Corporal</td>
<td>$42,058</td>
</tr>
<tr>
<td>Sergeant</td>
<td>$46,234</td>
</tr>
<tr>
<td>First Sergeant</td>
<td>$48,322</td>
</tr>
<tr>
<td>Second Lieutenant</td>
<td>$50,410</td>
</tr>
<tr>
<td>First Lieutenant</td>
<td>$52,498</td>
</tr>
<tr>
<td>Captain</td>
<td>$54,586</td>
</tr>
<tr>
<td>Major</td>
<td>$56,674</td>
</tr>
<tr>
<td>Lieutenant Colonel</td>
<td>$58,762</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Administration Support Specialist Classification</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$40,494</td>
</tr>
<tr>
<td>II</td>
<td>$40,882</td>
</tr>
<tr>
<td>III</td>
<td>$41,470</td>
</tr>
<tr>
<td>IV</td>
<td>$42,058</td>
</tr>
<tr>
<td>V</td>
<td>$46,234</td>
</tr>
<tr>
<td>VI</td>
<td>$48,322</td>
</tr>
<tr>
<td>VII</td>
<td>$50,410</td>
</tr>
<tr>
<td>VIII</td>
<td>$52,498</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Criminalist Classification</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>$40,494</td>
</tr>
<tr>
<td>II</td>
<td>$40,882</td>
</tr>
<tr>
<td>III</td>
<td>$41,470</td>
</tr>
<tr>
<td>IV</td>
<td>$42,058</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 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 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) 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.
LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2006

CHAPTER 1

(H.B. 212 - By Delegates Michael, Browning, Frederick, Houston, Kominar, Palumbo, Proudfoot, Stalnaker, Williams, Ashley and Border)

[Passed November 13, 2006; in effect from passage.]
[Approved by the Governor on November 20, 2006.]

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 Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, 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 Fund, General Revenue, dated the ninth day of November, two thousand six, setting forth therein the cash balance as of the first day of July, two thousand six; and further included the estimate of revenues for the fiscal year two thousand seven, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand seven; and

WHEREAS, It appears from the 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 seven; therefore,

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Fund, General Revenue, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2007, organization 0205, be supplemented, increased and amended by adding language and increasing an existing item of appropriation as follows:

1 TITLE II - APPROPRIATIONS.
2 Section 1. Appropriations from General Revenue.
3 DEPARTMENT OF ADMINISTRATION
4 19-Consolidated Public Retirement Board
5 (WV Code Chapter 5)
6 Fund 0195 FY 2007 Org 0205
7 Act- General
8 ivity Revenue
9 Funds

10 1 Unclassified-Total-Transfer-Surplus . . 682 $80,000,000
The above appropriation for Unclassified-Total-Transfer-Surplus (fund 0195, activity 682) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers' Retirement System Employers Accumulation Fund (fund 2601, organization 0205).

The purpose of this bill is to supplement, amend, and increase an item of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand seven.

CHAPTER 2

(S.B. 2001 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-21-21 of the Code of West Virginia, 1931, as amended, relating to personal income taxes generally; increasing the amount of the senior citizens' and disabled persons' refundable personal income tax credit for certain ad valorem property taxes paid; and authorizing the Tax Commissioner to not provide a refund of the credit if the amount of the refund is less than ten dollars.

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; tax credit for property tax paid on first twenty thousand dollars of value for property tax years after December 31, 2006.

(a) Allowance of credit. --

(1) 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, except as provided in subdivision (2) of this subsection.

(2) For tax years beginning on or after the first day of January, two thousand seven, 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 twenty 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 seven.

(3) Due to the administrative cost of processing, the
refundable credit authorized by this section may not be refunded if less than ten dollars.

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) (A) For tax years beginning before the first day of January, two thousand seven, “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, except as provided in paragraph (B) of this subdivision.

(B) For tax years beginning on or after the first day of January, two thousand seven, “taxes paid” means the aggregate of regular levies, excess levies and bond levies extended against not more than twenty thousand dollars of
TAXATION

(Ch. 3)

55  the taxable assessed value of a homestead that are paid during
56  the calendar year determined after application of any discount
57  for early payment of taxes but before application of any
58  penalty or interest for late payment of property taxes for a
59  property tax year that begins on or after the first day of
60  January, two thousand seven.

61  (c) Legislative rule.--

62  The Tax Commissioner shall propose a legislative rule
63  for promulgation as provided in article three, chapter twenty-
64  nine-a of this code to explain and implement this section.

65  (d) Confidentiality.--

66  The Tax Commissioner shall utilize property tax
67  information in the statewide electronic data processing
68  system network to the extent necessary for the purpose of
69  administering this section, notwithstanding any provision of
70  this code to the contrary.

CHAPTER 3

(S.B. 2002 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-24-6 of the Code of West
Virginia, 1931, as amended, relating to the elimination of the
corporation net income tax adjustment for pre-1967 gains on
the sale of property.
Be it enacted by the Legislature of West Virginia:

That §11-24-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6. Adjustments in determining West Virginia taxable income.

(a) General. -- In determining West Virginia taxable income of a corporation, its taxable income as defined for federal income tax purposes shall be adjusted and determined before the apportionment provided by section seven of this article, by the items specified in this section.

(b) Adjustments increasing federal taxable income. -- There shall be added to federal taxable income, unless already included in the computation of federal taxable income, the following items:

(1) Interest or dividends on obligations or securities of any state or of a political subdivision or authority of the state;

(2) Interest or dividends, less related expenses to the extent not deducted in determining federal taxable 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) Income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by this state or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;
(4) The amount of unrelated business taxable income as defined by Section 512 of the Internal Revenue Code of 1986, as amended, of a corporation which by reason of its purposes is generally exempt from federal income taxes;

(5) The amount of any net operating loss deduction taken for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended;

(6) Any amount included in federal taxable income which is a net operating loss from sources without the United States after making the decreasing adjustments provided in subdivisions (5) and (7), subsection (c) of this section for Section 951 income and Section 78 income. Federal taxable income from sources without the United States shall be determined in accordance with the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended; and

(7) The amount of foreign taxes deducted in determining federal taxable income.

(c) Adjustments decreasing federal taxable income. -- There shall be subtracted from federal taxable income to the extent included therein:

(1) Any gain from the sale or other disposition of property having a higher fair market value on the first day of July, one thousand nine hundred sixty-seven, than the adjusted basis at said date for federal income tax purposes: Provided, That the amount of this adjustment is limited to that portion of any gain which does not exceed the difference between the fair market value and the adjusted basis: Provided, however, That for tax years beginning after the thirty-first day of December, two thousand eight, no amount of gain from the sale or other disposition of property having
54 a higher fair market value on the first day of July, one
55 thousand nine hundred sixty-seven, than the adjusted basis at
56 said date for federal income tax purposes may be subtracted
57 from federal taxable income to the extent included therein;

58 (2) The amount of any refund or credit for overpayment
59 of income taxes and other taxes, including franchise and
60 excise taxes, which are based on, measured by, or computed
61 with reference to net income, imposed by this state or any
62 other taxing jurisdiction, to the extent properly included in
63 gross income for federal income tax purposes;

64 (3) The amount added to federal taxable income due to
65 the elimination of the reserve method for computation of the
66 bad debt deduction;

67 (4) The full amount of interest expense actually
68 disallowed in determining federal taxable income which was
69 incurred or continued to purchase or carry obligations or
70 securities of any state or of any political subdivision of the
71 state;

72 (5) The amount required to be added to federal taxable
73 income as a dividend received from a foreign (non-United
74 States) corporation under Section 78 of the Internal Revenue
75 Code of 1986, as amended, by a corporation electing to take
76 the foreign tax credit for federal income tax purposes;

77 (6) The amount of salary expenses disallowed as a
78 deduction for federal income tax purposes due to claiming
79 the federal jobs credit under Section 51 of the Internal
80 Revenue Code of 1986, as amended;

81 (7) The amount included in federal adjusted gross income
82 by the operation of Section 951 of the Internal Revenue Code
83 of 1986, as amended;
(8) Employer contributions to medical savings accounts established pursuant to section fifteen, article sixteen, chapter thirty-three of this code to the extent included in federal adjusted gross income for federal income tax purposes less any portion of employer contributions withdrawn for purposes other than payment of medical expenses: Provided, That the amount subtracted pursuant to this subsection for any one taxable year may not exceed the maximum amount that would have been deductible from the corporation's federal adjusted gross income for federal income tax purposes if the aggregate amount of the corporation's contributions to individual medical savings accounts established under section fifteen, article sixteen, chapter thirty-three of this code had been contributed to a qualified plan as defined under the Employee Retirement Income Security Act of 1974, as amended; and

(9) Any amount included in federal taxable income which is foreign source income. Foreign source income is any amount included in federal taxable income which is taxable income from sources without the United States, less the adjustments provided in subdivisions (5) and (7) of this subsection.

In determining "foreign source income", the provisions of Sections 861, 862 and 863 of the Internal Revenue Code of 1986, as amended, shall be applied.

(d) Net operating loss deduction. -- Except as otherwise provided in this subsection, there is allowed as a deduction for the taxable year an amount equal to the aggregate of: (1) The West Virginia net operating loss carryovers to that year; plus (2) the net operating loss carrybacks to that year: Provided, That no more than three hundred thousand dollars of net operating loss from any taxable year beginning after the thirty-first day of December, one thousand nine hundred
ninetyn-two, may be carried back to any previous taxable year. For purposes of this subsection, the term "West Virginia net operating loss deduction" means the deduction allowed by this subsection, determined in accordance with Section 172 of the Internal Revenue Code of 1986, as amended.

(1) Special rules. --

(A) When the corporation further adjusts its adjusted federal taxable income under section seven of this article, the West Virginia net operating loss deduction allowed by this subsection shall be deducted after the section seven adjustments are made;

(B) The Tax Commissioner shall prescribe the transition regulations as he or she deems necessary for fair and equitable administration of this subsection as amended by this act.

(2) Effective date. -- The provisions of this subsection, as amended by chapter one hundred nineteen, Acts of the Legislature, one thousand nine hundred eighty-eight, apply to all taxable years ending after the thirtieth day of June, one thousand nine hundred eighty-eight; and to all loss carryovers from taxable years ending on or before said thirtieth day of June.

(e) Special adjustments for expenditures for water and air pollution control facilities. --

(1) If the taxpayer so elects under subdivision (2) of this subsection, there shall be:

(A) Subtracted from federal taxable income the total of the amounts paid or incurred during the taxable year for the acquisition, construction or development within this state of
water pollution control facilities or air pollution control facilities as defined in Section 169 of the Internal Revenue Code of 1986, as amended; and

(B) Added to federal taxable income the total of the amounts of any allowances for depreciation and amortization of the water pollution control facilities or air pollution control facilities, as so defined, to the extent deductible in determining federal taxable income.

(2) The election referred to in subdivision (1) of this subsection shall be made in the return filed within the time prescribed by law, including extensions of the time, for the taxable year in which the amounts were paid or incurred. The election shall be made in that manner, and the scope of application of that election shall be defined, as the Tax Commissioner may by rule prescribe, and shall be irrevocable when made as to all amounts paid or incurred for any particular water pollution control facility or air pollution control facility.

(3) Notwithstanding any other provisions of this subsection or of section seven of this article to the contrary, if the taxpayer's federal taxable income is subject to allocation and apportionment under said section, the adjustments prescribed in paragraphs (A) and (B), subdivision (1) of this subsection shall, instead of being made to the taxpayer's federal taxable income before allocation and apportionment thereof as provided in section seven of this article, be made to the portion of the taxpayer's net income, computed without regard to the adjustments, allocated and apportioned to this state in accordance with said section.

(f) Allowance for certain government obligations and obligations secured by residential property. -- The West Virginia taxable income of a taxpayer subject to this article...
as adjusted in accordance with subsections (b), (c) and (e) of this section shall be further adjusted by multiplying the taxable income after the adjustment by said subsections by a fraction equal to one minus a fraction:

(1) The numerator of which is the sum of the average of the monthly beginning and ending account balances during the taxable year (account balances to be determined at cost in the same manner that obligations, investments and loans are reported on Schedule L of the Federal Form 1120) of the following:

(A) Obligations or securities of the United States, or of any agency, authority, commission or instrumentality of the United States and any other corporation or entity created under the authority of the United States Congress for the purpose of implementing or furthering an objective of national policy;

(B) Obligations or securities of this state and any political subdivision or authority of the state;

(C) Investments or loans primarily secured by mortgages, or deeds of trust, on residential property located in this state and occupied by nontransients; and

(D) Loans primarily secured by a lien or security agreement on residential property in the form of a mobile home, modular home or double-wide located in this state and occupied by nontransients.

(2) The denominator of which is the average of the monthly beginning and ending account balances of the total assets of the taxpayer which are shown on Schedule L of Federal Form 1120, which are filed by the taxpayer with the Internal Revenue Service.
(g) The amendments to the provisions of this section made during the regular session of the Legislature in the year one thousand nine hundred ninety-eight apply to all taxable years beginning on or after the thirty-first day of December, one thousand nine hundred ninety-seven.

CHAPTER 4

(S.B. 2003 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend and reenact §11-15-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-15-3b, all relating to the consumers sales and service tax generally; reducing the consumers sales and service tax on sales, purchases and uses of food and food ingredients intended for human consumption; and providing exceptions to the reduced rate of tax.

Be it enacted by the Legislature of West Virginia:

That §11-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-15-3b, all to read as follows:

§11-15-3b. Exceptions to reduced rate of tax on food and food ingredients intended for human consumption.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(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: Provided, That the rate of tax on sales, purchases and uses of food and food ingredients, as defined in said section, that is intended for human consumption after the thirtieth day of June, two thousand seven, shall be four percent of its sales price, as defined in said section: Provided, however, That the rate of tax on sales, purchases and uses of food and food ingredients as defined in said section that is intended for human consumption after the thirtieth day of June, two thousand eight, shall be three percent of its sales price, as defined in said section.

(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
The reduced rate of tax provided on food and food ingredients intended for human consumption provided in section three-a of this article 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: Provided, That after the thirtieth day of June, two thousand seven, the reduced rate of tax provided in section three-a of this article shall not apply to sales, purchases and uses by consumers of “prepared food”, “food sold through vending machines” and “soft drinks” as defined in article fifteen-b of this chapter, which shall be taxed at the general rate of tax specified in section three of this article and section two, article fifteen-a of this chapter.
AN ACT to amend and reenact §11-23-6 of the Code of West Virginia, 1931, as amended, relating to reducing the rate of the business franchise tax.

Be it enacted by the Legislature of West Virginia:

That §11-23-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-6. Imposition of tax; change in rate of tax.

(a) General. -- An annual business franchise tax is hereby imposed on the privilege of doing business in this state and in respect of the benefits and protection conferred. Such tax shall be collected from every domestic corporation, every corporation having its commercial domicile in this state, every foreign or domestic corporation owning or leasing real or tangible personal property located in this state or doing business in this state and from every partnership owning or leasing real or tangible personal property located in this state or doing business in this state, effective on and after the first day of July, one thousand nine hundred eighty-seven.
(b) Amount of tax and rate; effective date. --

(1) On and after the first day of July, one thousand nine hundred eighty-seven, the amount of tax shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base, as determined under this article: Provided, That when the taxpayer's first taxable year under this article is a short taxable year, the taxpayer's liability shall be prorated based upon the ratio which the number of months in which such short taxable year bears to twelve: Provided, however, That this subdivision shall not apply to taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine.

(2) Taxable years after December 31, 1988. -- For taxable years beginning on or after the first day of January, one thousand nine hundred eighty-nine, the amount of tax due under this article shall be the greater of fifty dollars or seventy-five one hundredths of one percent of the value of the tax base as determined under this article.

(3) Taxable years after June 30, 1997. -- For taxable years beginning on or after the first day of July, one thousand nine hundred ninety-seven, the amount of tax due under this article shall be the greater of fifty dollars or seventy hundredths of one percent of the value of the tax base as determined under this article.

(4) Taxable years after December 31, 2006. -- For taxable years beginning on or after the first day of January, two thousand seven, the amount of tax due under this article shall be the greater of fifty dollars or fifty-five one hundredths of one percent of the value of the tax base as
(c) **Short taxable years.** -- When the taxpayer's taxable year for federal income tax purposes is a short taxable year, the tax determined by application of the tax rate to the taxpayer's tax base shall be prorated based upon the ratio which the number of months in such short taxable year bears to twelve: *Provided,* That when the taxpayer's first taxable year under this article is less than twelve months, the taxpayer's liability shall be prorated based upon the ratio which the number of months the taxpayer was doing business in this state bears to twelve but in no event shall the tax due be less than fifty dollars.

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**CHAPTER 6**

**(S.B. 2005 - By Senators Tomblin, Mr. President, and Sprouse)**

*[By Request of the Executive]*

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[Passed November 13, 2006; in effect ninety days from passage.]

[Approved by the Governor on November 30, 2006.]

---

AN ACT to amend and reenact §11-24-4 of the Code of West Virginia, 1931, as amended, relating to reducing the rate of corporation net income tax.

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

That §11-24-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-4. Imposition of primary tax and rate thereof; effective and termination dates.

1  Primary tax. --

2  (1) In the case of taxable periods beginning after the thirtieth day of June, one thousand nine hundred sixty-seven, and ending prior to the first day of January, one thousand nine hundred eighty-three, a tax is hereby imposed for each taxable year at the rate of six percent per annum on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five.

3  (2) In the case of taxable periods beginning on or after the first day of January, one thousand nine hundred eighty-three, and ending prior to the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, and any banks, banking associations or corporations, trust companies, building and loan associations, and savings and loan associations, at the rates which follow:
(A) On taxable income not in excess of fifty thousand dollars, the rate of six percent; and

(B) On taxable income in excess of fifty thousand dollars, the rate of seven percent.

(3) In the case of taxable periods beginning on or after the first day of July, one thousand nine hundred eighty-seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of nine and three-quarters percent. Beginning the first day of July, one thousand nine hundred eighty-eight, and on each first day of July thereafter for four successive calendar years, the rate shall be reduced by fifteen one hundredths of one percent per year, with such rate to be nine percent on and after the first day of July, one thousand nine hundred ninety-two.

(4) In the case of taxable periods beginning on or after the first day of January, two thousand seven, a tax is hereby imposed for each taxable year on the West Virginia taxable income of every domestic or foreign corporation engaging in business in this state or deriving income from property, activity or other sources in this state, except corporations exempt under section five of this article, at the rate of eight and three-quarters percent.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5E-1-23; and to amend said code by adding thereto a new section, designated §5E-2-5, all relating to terminating authorization for certain tax credits for investment in capital companies and venture capital companies made after the thirty-first day of December, two thousand six.

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 §5E-1-23; and that said code be amended by adding thereto a new section, designated §5E-2-5, all to read as follows:

Article

1. West Virginia Capital Company Act.
2. West Virginia Venture Capital Act.
ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-23. Elimination of credit; effective date.

Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article shall result from, and no tax credit shall be available to, any taxpayer for any investment in a West Virginia capital company made after the thirty-first day of December, two thousand six: Provided, That the provisions of this article shall continue to apply to the investments for which tax credits were authorized and allocated pursuant to the provisions of this article in effect prior to the first day of January, two thousand seven.

ARTICLE 2. WEST VIRGINIA VENTURE CAPITAL ACT.

§5E-2-5. Elimination of credit; effective date.

Notwithstanding any other provision of this article to the contrary, no entitlement to any tax credit under this article shall result from, and no tax credit shall be available to, any taxpayer for any venture capital investment made after the thirty-first day of December, two thousand six: Provided, That the provisions of this article shall continue to apply to the investments for which tax credits were authorized and allocated pursuant to the provisions of this article in effect prior to the first day of January, two thousand seven.

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AN ACT to amend and reenact §5B-2E-11 of the Code of West Virginia, 1931, as amended, relating to extending period in which applications for tourism development project tax credits may be received and considered.

Be it enacted by the Legislature of West Virginia:

That §5B-2E-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-11. Termination.

1 The development office may not accept any new application after the thirtieth day of June, two thousand seven, and all applications submitted prior to the first day of July, two thousand seven, that have not been previously approved or not approved, shall be deemed not approved and shall be null and void as of the first day of July, two thousand seven.
AN ACT to amend and reenact §11-21-71a of the Code of West Virginia, 1931, as amended, relating to increasing the rate of personal income tax withholding for certain nonresidents of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §11-21-71a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

(a) General rule. -- For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as
a pass-through entity for federal income tax purposes and
which has taxable income for the taxable year derived from
or connected with West Virginia sources any portion of
which is allocable to a nonresident partner, nonresident
shareholder, or nonresident beneficiary, as the case may be,
shall pay a withholding tax under this section, except as
provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax.--

(1) In general. -- The amount of withholding tax payable
by any partnership, S corporation, estate or trust, under
subsection (a) of this section, shall be equal to four percent of
the effectively connected taxable income of the partnership,
S corporation, estate or trust, as the case may be, which may
lawfully be taxed by this state and which is allocable to a
nonresident partner, nonresident shareholder, or nonresident
beneficiary of a trust or estate: Provided, That for taxable
years commencing on or after the first day of January, two
thousand eight, the amount of withholding tax payable by any
partnership, S corporation, estate or trust, under subsection
(a) of this section, shall be equal to six and one-half percent
of the effectively connected taxable income of the
partnership, S corporation, estate or trust, as the case may be,
which may lawfully be taxed by this state and which is
allocable to a nonresident partner, nonresident shareholder,
or nonresident beneficiary of a trust or estate.

(2) Credits against tax. -- When determining the amount
of withholding tax due under this section, the pass-through
entity may apply any tax credits allowable under this chapter
to the pass-through entity which pass through to the
nonresident distributees: Provided, That in no event may the
application of any credit or credits reduce the tax liability of
the distributee under this article to less than zero.

(c) *When withholding is not required.* -- Withholding
shall not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of such person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or article twenty-four of this chapter; or

(2) On distributions to a corporation which is exempt from the tax imposed by article twenty-four of this chapter. For purposes of this subdivision, a corporation is exempt from the tax imposed by article twenty-four of this chapter only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by article twenty-four of this chapter provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in its return for the taxable
(3) On distributions when compliance will cause undue hardship on the pass-through entity: Provided, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under subsection (c), section fifty-eight of this article, under such regulations and in such form and manner as the Tax Commissioner may
prescribe, setting forth: (A) The amount of fixed or
determinable gains, profits and income; and (B) the name,
address and taxpayer identification number of persons
receiving fixed or determinable gains, profits or income from
the nonpartnership venture.

(d) Payment of withheld tax. —

(1) General rule. -- Each partnership, S corporation,
estate or trust, required to withhold tax under this section,
shall pay the amount required to be withheld to the Tax
Commissioner no later than:

(A) S corporations. -- The fifteenth day of the third
month following the close of the taxable year of the S
corporation along with the annual information return due
under article twenty-four of this chapter, unless paragraph
(C) of this subdivision applies.

(B) Partnerships, estates and trusts. -- The fifteenth day
of the fourth month following the close of the taxable year of
the partnership, estate or trust, with the annual return of the
partnership, estate or trust due under this article, unless
paragraph (C) of this subdivision applies.

(C) Composite returns. -- The fifteenth day of the fourth
month of the taxable year with the composite return filed
under section fifty-one-a of this article.

(2) Special rules. --

(A) Where there is extension of time to file return. -- An
extension of time for filing the returns referenced in
subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least ninety percent of the withholding tax due for the taxable year, or one hundred percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of twelve months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing such return and the amount of tax due with such return is ten percent or less of the tax due under this section for the taxable year, no additions to tax shall be imposed under article ten of this chapter with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. -- The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. -- For purposes of this section, the term "effectively connected taxable
income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under section thirty-two of this article and such regulations as the Tax Commissioner may prescribe, whether such amount is actually distributed or is deemed to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders or beneficiaries of a trust or estate. --

(1) Allowance of credit. -- Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust under this section: Provided, That when the distribution is to a corporation taxable under article twenty-four of this chapter, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under article twenty-four of this chapter.

(2) Credit treated as distributed to partner, shareholder or beneficiary. -- Except as provided in regulations, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to such partner by such partnership, or to such shareholder by such S corporation, or to such beneficiary by such estate or trust on the earlier of:
(A) The day on which such tax was paid to the Tax Commissioner by the partnership, S corporation, estate or trust; or

(B) The last day of the taxable year for which such tax was paid by the partnership, S corporation, estate or trust.

(g) Regulations. -- The Tax Commissioner shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(h) Information statement. —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to such nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection must be filed with the West Virginia return filed under this article (or article twenty-four of this chapter in the case of S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement must be furnished to each nonresident distributee on or before the due date of the pass-through
entity's return under this article or article twenty-four of this
chapter for the taxable year, including extensions of time for
filing such return, or such later date as may be allowed by the
Tax Commissioner.

(i) Liability for withheld tax. -- Every person required to
deduct and withhold tax under this section is hereby made
liable for the payment of the tax due under this section for
taxable years (of such persons) beginning after the thirty-first
day of December, one thousand nine hundred ninety-one,
except as otherwise provided in this section. The amount of
tax required to be withheld and paid over to the Tax
Commissioner shall be considered the tax of the partnership,
estate or trust, as the case may be, for purposes of articles
nine and ten of this chapter. Any amount of tax withheld
under this section shall be held in trust for the Tax
Commissioner. No partner, S corporation shareholder, or
beneficiary of a trust or estate, shall have a right of action
against the partnership, S corporation, estate or trust, in
respect to any moneys withheld from such person's
distributive share and paid over to the Tax Commissioner in
compliance with or in intended compliance with this section.

(j) Failure to withhold. -- If any partnership, S
corporation, estate or trust fails to deduct and withhold tax as
required by this section and thereafter the tax against which
such tax may be credited is paid, the tax so required to be
deducted and withheld under this section shall not be
collected from the partnership, S corporation, estate or trust,
as the case may be, but the partnership, S corporation, estate
or trust shall not be relieved from liability for any penalties
or interest on additions to tax otherwise applicable in respect
of such failure to withhold.
TAXATION

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(k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of such nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or article twenty-four of this chapter in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or article twenty-four of this chapter in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection must file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with regulations promulgated by the Tax Commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity shall
not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee's continuing failure to comply with the terms of such agreement.

(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or article twenty-four of this chapter in the case of S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(1) Definitions. -- For purposes of this section, the following terms mean:

(1) Corporation. -- The term "corporation" includes associations, joint stock companies and other entities which are taxed as corporations for federal income tax purposes.
(A) *C corporation.* — The term "C corporation" means a corporation which is not an S corporation for federal income tax purposes.

(B) *S corporation.* — The term "S corporation" means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

(2) *Distributee.* — The term "distributee" includes any partner of a partnership, any shareholder of an S corporation and any beneficiary of an estate or trust that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

(3) *Internal Revenue Code.* — The term "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, through the date specified in section nine of this article.

(4) *Nonresident distributee.* — The term "nonresident distributee" includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust or corporation whose commercial domicile is located outside this state.

(5) *Partner.* — The term "partner" includes a member of a partnership as that term is defined in this section.

(6) *Partnership.* — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. "Partnership" does not include an unincorporated
organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) Taxable period. -- The term "taxable period" means, in the case of an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(8) Taxable year of the pass-through entity. -- The term "taxable year of the pass-through entity" means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) Effective date. -- The provisions of this section shall first apply to taxable years of pass-through entities beginning after the thirty-first day of December, one thousand nine hundred ninety-one.

CHAPTER 10

(S.B. 2009 - By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.] [Approved by the Governor on November 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-71b, relating to requiring certain amounts to be withheld and paid to the Tax
Commissioner from total payments made for the sale or exchange of real property and associated tangible personal property owned by a nonresident or nonresident entity; providing exceptions; providing penalties; and providing for administration.

*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 §11-21-71b, to read as follows:

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-71b. Withholding tax on West Virginia source income of nonresidents.**

(a) (1) In this section the following words have the meanings indicated.

(2) (A) Except as provided in paragraph (B) of this subdivision, “net proceeds” means the total sales price paid to the transferor less:

(i) Debts of the transferor secured by a mortgage or other lien on the property being transferred that are being paid upon the sale or exchange of the property; and

(ii) Other expenses of the transferor arising out of the sale or exchange of the property and disclosed on a settlement statement prepared in connection with the sale or exchange of the property, not including adjustments in favor of the transferee.

(B) “Net proceeds” does not include adjustments in favor of the transferor that are disclosed on a settlement statement
prepared in connection with the sale or exchange of the property.

(3) "Nonresident entity" means an entity that:

(A) Is not formed under the laws of the state; and

(B) Is not qualified by or registered with the Tax Commissioner to do business in the state.

(4) "Resident entity" means an entity that:

(A) Is formed under the laws of the state; or

(B) Is formed under the laws of another state and is qualified by or registered with the Tax Commissioner to do business in the state.

(5) "Total payment" means the net proceeds of a sale actually paid to a transferor, including the fair market value of any property transferred to the transferor.

(6) "Transfer pursuant to a deed in lieu of foreclosure" includes:

(A) A transfer by the owner of the property to:

(i) With respect to a deed in lieu of foreclosure of a mortgage, the mortgagee, the assignee of the mortgage, or any designee or nominee of the mortgagee or assignee of the mortgage;

(ii) With respect to a deed in lieu of foreclosure of a deed of trust, the holder of the debt or other obligation secured by the deed of trust or any designee, nominee, or assignee of the
holder of the debt or other obligation secured by the deed of trust;

(iii) With respect to a deed in lieu of foreclosure of any other lien instrument, the holder of the debt or other obligation secured by the lien instrument or any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; and

(B) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value.

(7) “Transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument” includes:

(A) With respect to the foreclosure of a mortgage:

(i) A transfer by the mortgagee, the assignee of the mortgage, the attorney named in the mortgage, or the attorney or trustee conducting a foreclosure sale pursuant to the mortgage to:

(I) The mortgagee or the assignee of the mortgage;

(II) Any designee, nominee, or assignee of the mortgagee or assignee of the mortgage; or

(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value;
(B) With respect to the foreclosure of a deed of trust:

(i) A transfer by the trustees, successor trustees, substituted trustees under the deed of trust, or trustees conducting a foreclosure sale pursuant to the deed of trust to:

(I) The holder of the debt or other obligation secured by the deed of trust;

(II) Any designee, nominee, or assignee of the holder of the debt secured by the deed of trust; or

(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and

(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value; and

(C) With respect to the foreclosure of any other lien instrument:

(i) A transfer by the party authorized to make the sale to:

(I) The holder of the debt or other obligation secured by the lien instrument;

(II) Any designee, nominee, or assignee of the holder of the debt secured by the lien instrument; or

(III) Any purchaser, substituted purchaser, or assignee of any purchaser or substituted purchaser of the foreclosed property; and
(ii) A transfer by any of the persons described in subparagraph (i) of this paragraph to a subsequent purchaser for value.

(b) (1) For every deed or other instrument of writing that effects a change of ownership on the land books of a county assessor and for which an amount is required to be withheld under subsection (c) of this section, the total payment shall be described on the form prescribed by the Tax Commissioner.

(2) The form required under subdivision (1) of this subsection shall be signed under oath by:

(i) The transferor of the property;

(ii) An agent of the transferor; or

(iii) The real estate reporting person, as defined under Section 6045 of the Internal Revenue Code.

(c) (1) Except as otherwise provided in this section, in a sale or exchange of real property and associated tangible personal property owned by a nonresident or nonresident entity occurring on during taxable years beginning on or after the first day of January, two thousand eight, the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, shall withhold an amount equal to two and one-half percent of the total payment to a nonresident or nonresident entity. In lieu thereof, the real estate reporting person may withhold an amount equal to six and one-half percent of the estimated capital gain derived from the sale or exchange. The amounts withheld shall be paid to the Tax Commissioner by the real estate reporting person within thirty days of the date the amounts were withheld.
(2) The Tax Commissioner may propose alternatives to the percentages of payments or capital gains set forth in this section that may, based upon experience and application of this section, more accurately represent the value of capital gains subject to taxation in this state and, upon enactment of any such rules, those alternatives to the percentages shall supersede the percentages set forth in this subsection.

(d) Subsection (c) of this section does not apply when:

(1) A certification under penalties of perjury that the transferor is a resident of the state or is a resident entity is provided by each transferor in:

(A) The recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(B) An affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property;

(2) The transferor presents to the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, a certificate issued by the Tax Commissioner stating that:

(A) No tax is due from that transferor in connection with that sale or exchange of property;

(B) A reduced amount of tax is due from that transferor in connection with that sale or exchange of property and stating the reduced amount that should be collected by the real estate reporting person, as defined under Section 6045 of the Internal Revenue Code, before recordation or filing; or
(C) The transferor has provided adequate security to cover the amount required to be withheld under subsection (c) of this section;

(3) The property transfer is:

(A) A transfer pursuant to a foreclosure of a mortgage, deed of trust, or other lien instrument; or

(B) A transfer pursuant to a deed in lieu of foreclosure;

(4) The property is transferred by the United States, the state, or a unit or political subdivision of the state;

(5) A certification under penalties of perjury that the property being transferred is the transferor’s principal residence is provided by each transferor in:

(A) The recitals or the acknowledgment of the deed or other instrument of writing transferring the property to the transferee; or

(B) An affidavit signed by the transferor or by an agent of the transferor that accompanies and is recorded with the deed or other instrument of writing transferring the property;

(6) The property is transferred pursuant to a deed or other instrument of writing that includes a statement of consideration required in section six, article twenty-two of this code indicating that the consideration payable is zero.

(e) Except as provided in this section, the amounts described in subsection (c) of this section shall be collected by the real estate reporting person before the deed or other instrument of writing is presented for recordation or filing.
(f) (1) Amounts collected under subsection (c) of this section and paid over to the Tax Commissioner under subsection (e) of this section shall be deemed to have been paid to the Tax Commissioner on behalf of the transferor from whom the amounts were withheld.

(2) The transferor shall be credited with having paid the amounts for the taxable year in which the transaction that is the subject of the tax occurred against any tax owed by the transferor to the State of West Virginia on gains resulting from the transaction and is entitled to a refund from the Tax Commissioner of any amount in excess of the amount owed, except as provided in subsection (i) of this section.

(g) The real estate reporting person is subject to the requirements and penalties prescribed for the failure to pay the amount of a tax prescribed by article ten of this chapter for the failure to pay to the Tax Commissioner amounts withheld pursuant to provisions of this section.

(h) This section does not:

(1) Impose any tax on a transferor or affect any liability of the transferor for any tax; or

(2) Prohibit the Tax Commissioner from collecting any taxes due from a transferor in any other manner authorized by law.

(i) (1) The Tax Commissioner shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement and administer this section.
(2) The Tax Commissioner shall establish procedures for the issuance of the certificate referred to in subdivision (2), subsection (d) of this section.

(3) The Tax Commissioner shall establish a procedure by which a transferor may apply for an early refund of the tax collected under this section if the transferor establishes that no tax will be owed or less tax than collected will be owed.

(4) If the amount withheld and paid to the Tax Commissioner under this section equals or exceeds the amount of tax owed by the transferor, the transferor may, at his or her discretion, not file the return required by this article: Provided, That failure to file a return is deemed to be a final decision to not claim a refund for an overpayment of the tax imposed by this article, and no claim for refund shall be granted and no refund paid with relation to tax withheld pursuant to this section for which no return was filed by the taxpayer.

CHAPTER 11

(S.B. 2010 - By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed November 14, 2006; in effect ninety days from passage.]
[Approved by the Governor on November 30, 2006.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto four new sections, designated §11-21-22, §11-21-22a, §11-21-22b and §11-21-22c, all relating to
personal income tax generally; enacting a low-income family
tax credit; defining terms; establishing dates upon which credit
becomes available and amounts of credit; and providing for
administration of credit.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto four new sections, designated §11-21-22,
§11-21-22a, §11-21-22b and §11-21-22c, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-22. Low-income family tax credit.

1 In order to eliminate West Virginia personal income tax
2 on families with incomes below the federal poverty
3 guidelines and to reduce the West Virginia personal income
4 tax on families with incomes that are immediately above the
5 federal poverty guidelines, there is hereby created a
6 nonrefundable tax credit, to be known as the low-income
7 family tax credit, against the West Virginia personal income
8 tax. The low-income family tax credit is based upon family
9 size and the federal poverty guidelines and reduces the tax
10 imposed by the provisions of this article on families with
11 modified federal adjusted gross income below or near the
12 federal poverty guidelines.


1 When used in this section and sections twenty-two,
2 twenty-two-b and twenty-two-c of this article, the following
terms shall have the meaning ascribed herein, unless a different meaning is clearly provided by the context in which the term is used.

(a) “Federal poverty guidelines” means the U. S. Department of Health and Human Services poverty guidelines updated periodically in the Federal Register under the authority of 42 U. S. C. §9902(c) and available each year on the thirtieth day of June.

(b) “Family size” means the total number of exemptions that may be legally claimed on the West Virginia resident personal income tax return for the taxable year for which the tax credit is claimed: Provided, That family size shall not include the additional exemption that may be claimed by a surviving spouse pursuant to subsection (c), section sixteen of this chapter: Provided, however, That if the total number of exemptions that may be legally claimed on the West Virginia resident personal income tax return for the taxable year for which the tax credit is claimed exceeds eight, the family size shall be deemed eight.

(c) “Indexed tax credit tables” means the two tables annually developed and published by the Tax Commissioner pursuant to the requirements of section twenty-two-b of this article.

(d) “Modified federal adjusted gross income” means the federal adjusted gross income plus any applicable increasing West Virginia modifications plus any tax exempt interest income reported on the federal tax return.

(e) “Qualified taxpayer” means a taxpayer:

(1) Who files the West Virginia personal income tax return required by this article;
(2) Who files as an individual, as a head of household, as a husband and wife who file a joint return, as an individual entitled to file as a surviving spouse, or as a husband and wife who file separate returns; and

(3) Whose modified federal adjusted gross income does not exceed:

(A) The federal poverty guidelines amount for the family size of the taxpayer plus two thousand seven hundred dollars for those taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse; or

(B) Fifty percent of the federal poverty guidelines amount for the family size of the taxpayer plus one thousand three hundred fifty dollars for those taxpayers who are husband and wife and who file separate returns.

(f) “Tax credit” means the low-income family tax credit authorized by this article.

§11-21-22b. Amount of credit.

(a) For each taxable year beginning on or after the first day of January, two thousand seven, the tax credit authorized by section twenty-two of this article may be used by every qualified taxpayer and shall be calculated in accordance with subsections (b) and (c) of this section: Provided, That for the taxable year beginning on the first day of January, two thousand seven, the qualified taxpayer shall be allowed to claim only fifty percent of the amount of the tax credit.

(b) Qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint
return, or as an individual entitled to file as a surviving spouse shall be entitled to a tax credit based on the following:

(1) If modified federal adjusted gross income is at or below the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;

(2) If modified federal adjusted gross income is greater than the federal poverty guidelines but does not exceed three hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;

(3) If modified federal adjusted gross income is greater than three hundred dollars above the federal poverty guidelines but does not exceed six hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer;

(4) If modified federal adjusted gross income is greater than six hundred dollars above the federal poverty guidelines but does not exceed nine hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;

(5) If modified federal adjusted gross income is greater than nine hundred dollars above the federal poverty guidelines but does not exceed one thousand two hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;
(6) If modified federal adjusted gross income is greater than one thousand two hundred dollars above the federal poverty guidelines but does not exceed one thousand five hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;

(7) If modified federal adjusted gross income is greater than one thousand five hundred dollars above the federal poverty guidelines but does not exceed one thousand eight hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;

(8) If modified federal adjusted gross income is greater than one thousand eight hundred dollars above the federal poverty guidelines but does not exceed two thousand one hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;

(9) If modified federal adjusted gross income is greater than two thousand one hundred dollars above the federal poverty guidelines but does not exceed two thousand four hundred dollars above the federal poverty guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or

(10) If modified federal adjusted gross income is greater than two thousand four hundred dollars above the federal poverty guidelines but does not exceed two thousand seven hundred dollars above the federal poverty guidelines based
on family size, the amount of credit allowable shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.

(c) Qualified taxpayers who are husband and wife and who file separate returns shall be entitled to a tax credit based on the following:

(1) If modified federal adjusted gross income is at or below fifty percent of the federal poverty guidelines based on family size, the credit shall be an amount equal to the amount of tax owed under this article by the qualified taxpayer;

(2) If modified federal adjusted gross income is greater than fifty percent of the federal poverty guidelines but does not exceed one hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be ninety percent of the amount of tax owed under this article by the qualified taxpayer;

(3) If modified federal adjusted gross income is greater than one hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed three hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be eighty percent of the amount of tax owed under this article by the qualified taxpayer;

(4) If modified federal adjusted gross income is greater than three hundred dollars above fifty percent of the federal poverty guidelines but does not exceed four hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be seventy percent of the amount of tax owed under this article by the qualified taxpayer;
(5) If modified federal adjusted gross income is greater than four hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed six hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be sixty percent of the amount of tax owed under this article by the qualified taxpayer;

(6) If modified federal adjusted gross income is greater than six hundred dollars above fifty percent of the federal poverty guidelines but does not exceed seven hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be fifty percent of the amount of tax owed under this article by the qualified taxpayer;

(7) If modified federal adjusted gross income is greater than seven hundred fifty dollars above fifty percent of the federal poverty guidelines but does not exceed nine hundred dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be forty percent of the amount of tax owed under this article by the qualified taxpayer;

(8) If modified federal adjusted gross income is greater than nine hundred dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit allowable shall be thirty percent of the amount of tax owed under this article by the qualified taxpayer;

(9) If modified federal adjusted gross income is greater than one thousand fifty dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand two hundred dollars above fifty percent of the federal poverty guidelines, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer;
guidelines based on family size, the amount of credit allowable shall be twenty percent of the amount of tax owed under this article by the qualified taxpayer; or

(10) If modified federal adjusted gross income is greater than one thousand two hundred dollars above fifty percent of the federal poverty guidelines but does not exceed one thousand three hundred fifty dollars above fifty percent of the federal poverty guidelines based on family size, the amount of credit shall be ten percent of the amount of tax owed under this article by the qualified taxpayer.

(d) The Tax Commissioner shall develop and publish on an annual basis two indexed tax credit tables. One tax table shall be for qualified taxpayers who file as an individual, as a head of household, as a husband and wife who file a joint return, or as an individual entitled to file as a surviving spouse and one tax table shall be for qualified taxpayers who are husband and wife and who file separate returns. The indexed tax credit tables shall be based on subsections (b) and (c) of this section.

§11-21-22c. Administration.

The Tax Commissioner may propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the administration of the provisions of sections twenty-two, twenty-two-a and twenty-two-b of this article, file administrative notices in the State Register in accordance with section three, article two, chapter twenty-nine-a of this code, and develop and publish any instructions, any or all of which as may be determined to be necessary to provide to taxpayers guidance and assistance when claiming this tax credit.
AN ACT to amend and reenact §11-15-8d of the Code of West Virginia, 1931, as amended, relating to providing an exemption from consumers sales and service tax for purchases by a contractor when the purchased materials will be used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure to be primarily used for manufacturing.

Be it enacted by the Legislature of West Virginia:

That §11-15-8d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-8d. Limitations on right to assert exemptions.

(a) Persons who perform “contracting” as defined in section two of this article, or persons acting in an agency capacity, may not assert any exemption to which the purchaser of such contracting services or the principal is
entitled. Any statutory exemption to which a taxpayer may be entitled shall be invalid unless the tangible personal property or taxable service is actually purchased by such taxpayer and is directly invoiced to and paid by such taxpayer: Provided, That this section shall not apply to purchases by an employee for his or her employer; purchases by a partner for his or her partnership; or purchases by a duly authorized officer of a corporation, or unincorporated organization, for his or her corporation or unincorporated organization, so long as the purchase is invoiced to and paid by such employer, partnership, corporation or unincorporated organization.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, effective the first day of July, two thousand seven, a person who performs "contracting", as defined in section two of this article, may assert an exemption to which the purchaser of such contracting services is entitled if:

(A) The exemption is asserted as to purchases of services, machinery, supplies or materials, except gasoline and special fuel, to be directly used or consumed in the construction, alteration, repair or improvement of a new or existing building or structure;

(B) The building or structure is to be primarily used for manufacturing, which may include the generation of electric power, by the purchaser of the contracting services; and

(C) The exemption is available to the purchaser of the contracting services for those purposes under subdivision (2), subsection (b), section nine of this article.
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2539
WEST VIRGINIA HOUSE OF DELEGATES

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Regular Session, 2007

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Regular Session, 2007

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